TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 404.

THE THIRD NATIONAL BANK OF LOUISVILLE, APPELLANT,

vs.

SAMUEL H. STONE, AUDITOR OF PUBLIC ACCOUNTS; CHARLES FINLEY, SECRETARY OF STATE, AND GEORGE W. LONG, TREASURER OF THE STATE OF KENTUCKY, AND THE CITY OF LOUISVILLE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED SEPTEMBER 15, 1898.

(16,989.)

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1 Proceedings of the circuit court of the United States for the district of Kentucky, at a regular term begun and held at the Federal court hall, in the city of Louisville, on Monday, February 21st, A. D. 1898.

Present: Honorable John M. Harlan, circuit justice, and Honorables Wm. H. Taft and H. H. Lurton, circuit judges.

THIRD NATIONAL BANK, Complainant,
vs.
SAMUEL H. STONE, &c., Defendants. } No. 6573.

Be it remembered that heretofore, to wit, on the 17th day of April, A. D. 1897, came the complainant, by counsel, and filed in the clerk's office of our said court its bill of complaint against the above-named defendants.

Said bill of complaint above referred to is as follows:

2 To the judges of the circuit court of the United States for the sixth circuit and district of Kentucky:

Third national bank, a citizen and resident of the State of Kentucky, brings this bill against Samuel H. Stone, Charles Finley and G. W. Long, citizens and residents of the State of Kentucky, and The City of Louisville, a municipal corporation of said State of Kentucky; and thereupon your orator complains and says that it is a corporation duly chartered and organized under the laws of Congress known as the "national banking acts" on August 22nd, 1874, and was extended and renewed on August 6th, 1894, for twenty years, and all the rights and privileges enjoyed by your orator under its first organization, including its rights of contract with the State of Kentucky, hereinafter described, passed to your orator under its extended or renewed charter.

Your orator says it is and has been since its organization *been* engaged in the banking business in the city of Louisville, Kentucky. The defendant Samuel H. Stone is the auditor of public accounts for the Commonwealth of Kentucky, the defendant Charles Finley is the secretary of state, and the defendant George W. Long is the treasurer of the State, all of them having been duly elected to their respective offices, and having qualified as provided by law.

The defendant, The City of Louisville, is a municipal corporation deriving all its rights and powers from a statute law of Kentucky duly passed for the government of cities of the first class.

Par. 2. Your orator shows that prior to the passage of the revenue law by the General Assembly of the Commonwealth of Kentucky, approved May 17, 1886, known as the "Hewitt bill," the law of said Commonwealth governing the taxation of banks was very unsatisfactory in this, to wit: that there were four banks chartered by said State prior to the year 1856, which held charter contracts beyond the power of the State to repeal. Said banks are hereafter referred to as the old banks. These banks had a large capital and divers branches, and came into immediate and direct competition with the

other banks of the State. The court of appeals of Kentucky, the court of final resort in that State, had several times construed said contracts and held that they were beyond the power of legislature to repeal. By their said contracts with the State each of these banks could discharge itself of all taxation—State and local, such as county, city and district—by the payment of fifty cents on each share of its stock of the par value of $100, and this payment of fifty cents on each share of stock the Commonwealth was by its contract bound to receive in full payment of its claim for taxation upon all the different kinds of property of said bank.

In addition to this complication with the old banks, the national banks in the State were claiming the right to be put upon a footing as to taxation upon an equality with the four old banks, and as the capital of the four old banks was about equal to the combined capital of all the other State banks, the courts of Kentucky had held that they could not be subjected to a heavier burden of taxation.

No other bank in the State could be taxed at a materially higher rate without practically driving it out of business, as it would thereby be unable to compete with the said four old banks
3 and the national banks, and for this reason by express provisions of the respective charters granted by the State, as by the general law, all the banks and other institutions of loan or discount were taxed at the same rate as the old banks and national banks. The State being dissatisfied with the existing tax rate against the banks and similar corporations desired to increase the rate, but much desired, for the reason above referred to, to have the tax rate on all the banks in the State uniform, which could only be done by exempting them from local taxation and increasing their tax to the State. And as it was not within the power of the State to increase the tax rate against the old banks except with their consent, they were asked in the interest of uniformity to consent, and, in the interest of uniformity and to secure to the banking interests in the State repose on the tax question for the remainder of their respective charter lives, the old banks did consent in the manner hereafter described to the scheme of taxation hereafter more particularly described. Accordingly the General Assembly of the Commonwealth of Kentucky, as a part of its revenue bill, entitled, "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, enacted provisions concerning the taxation of banks substantially as follows:

1st. It declared that the shares of stock in State and national banks, and other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock, shall be taxed seventy-five cents on each share thereof equal to one hundred dollars, or on each one hundred dollars of stock therein owned by individuals, corporations, or societies, and said banks, institutions, and corporations, shall, in addition, pay upon each one hundred dollars of so much of their surplus, undivided surplus, undivided profits, or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is

assessed upon real estate, which shall be in full of all tax, State, county and municipal. For the purpose of ascertaining such surplus, undivided profits, or undivided accumulations, it is provided that the auditor might at his option investigate the books of the bank, institution or corporation. And it is further provided that any officer having in charge the affairs of such bank, institution, or corporation who shall refuse, when duly called upon, for the purpose, to allow his books to be investigated, shall be subject to indictment in the Franklin circuit court, or the circuit court of the county wherein said bank, institution or corporation shall be located, and, upon conviction, shall be fined not less than five hundred dollars and not more than one thousand dollars.

It is further provided that the cashier of the bank, and the treasurer of any other institution or corporation, whose stock is taxed, shall, on the first day of July in each year, report to the auditor of public accounts the true amount of the capital stock, and the true amount of surplus, undivided profits, or undivided accumulations, and how or in what said surplus, undivided profits, or undivided accumulations *is* invested, and pay into the treasury the amount of tax due.

It is further provided that if such tax be not paid, the cashier and his sureties shall be liable for the same and twenty per cent. upon the amount, and any State bank, institution, or corporation shall thereby forfeit the privilege of its charter.

The fourth section of said act is as follows:

"That each of said banks, institutions, and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right under the acts of Congress or under the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such bank and delivered to the governor of this Commonwealth; and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever, so long as said tax shall be paid during the corporate existence of such bank."

By the fifth section it is declared that said banks may take the proceeding authorized by section 4 of this act at any time until the meeting of the next General Assembly; provided, they pay the tax provided in section 1 from the passage of this act. Said act also provides in effect that said banks accepting the provisions of said bill shall pay taxes for municipal and county purposes on any real estate or building owned and used by said banks or corporations for conducting their business.

Your orator further shows that thereafter within the time allowed by said act, to wit, during the year 1887, and before the meeting of the next General Assembly, it caused the question of the acceptance or non-acceptance of the State's proposition to be submitted

to a quorum of its stockholders duly assembled for the purpose of considering said question; and after due consideration its stockholders, representing more than a majority of all its stock outstanding, consented to the levying of said tax, and agreed to pay the same as in the said law provided, and to waive and release all its rights under its charter to a different mode or a smaller rate of taxation, and said consent and agreement to and with the State of Kentucky was evidenced by writing under the corporate seal of your orator, which was delivered to the governor of the Commonwealth and from
4 that time thenceforward continuously to the present time your orator regularly and promptly paid its taxes each year in accordance with and as provided by its said contract, except as hereinafter explained.

Your orator through its cashier made its report in accordance with said law, and paid into the State treasury on the first day of July, 1887—the said law not having gone into effect until September 14, 1886—the full tax required by said act, and in conformity with said act has made its report in proper form to the auditor of public accounts on the first day of July in each and every year up to this time.

Your orator shows that in July, 1893 and 1894, it made its report as usual to the auditor of public accounts in the manner prescribed by the act of May 17, 1886, known as the "Hewitt bill," and tendered the amount of the tax due thereunder, to wit, seventy-five cents on each share of its capital stock equal to one hundred dollars, and also in accordance with said act tendered to said auditor the taxes at the current rate, then assessed upon real estate upon so much of its surplus, undivided surplus, undivided profits or accumulations as exceeded an amount equal to ten per cent. on its capital stock, but said auditor refused to accept the money so tendered, or to receive any more than the current rate of forty-two and one-half cents on the hundred dollars on the valuation fixed by the State board of valuation and assessment provided for in the act of November 11, 1892, hereafter more particularly set out. The amount so demanded by the auditor your orator paid under protest.

Afterwards on the 1st day of June, 1895, the court of appeals of Kentucky decided in favor of the banks the litigation hereinafter mentioned, and thereafter the auditor of the State demanded from your orator and each of the other banks in the State, for the years 1893 and 1894 the difference between what had been paid under the act of November 11, 1892, and what should have been paid under the act of May 17, 1886, known as the "Hewitt bill;" and your orator promptly complied with said demand and paid said difference into the treasury of the State, and for the years 1895 and 1896 your orator made report and payment under the "Hewitt bill" and in accordance with its provisions; and so it is that your orator respectfully shows that it has regularly since and including 1887, and up to the present time reported to the auditor in the manner provided by said act of May 17, 1886, and has regularly, and within the prescribed time paid its taxes thereunder, except, and for the causes

mentioned, during the period above described. Your orator has never owned any real estate.

Your orator respectfully shows and submits to this honorable court that the act hereinbefore specifically set out, adopted by the General Assembly of Kentucky on the 17th of May, 1886, and your orator's formal acceptance thereunder as provided by said statute, and your orator's payment thereunder and in accordance therewith to the State of a sum much in excess of that paid by individuals to the State on the same kind of property, and the acceptance thereof by the State, constituted a contract between the State on the one part and your orator and its stockholders upon the other part, continuing during the legal existence of your orator's corporate life, and the State was equally with your orator bound thereby, and had no right to retire therefrom.

Par. 3. Your orator respectfully shows that notwithstanding the contract thus formally entered into, and which it was agreed should subsist during the charter life of your orator, the State of Kentucky on the 11th of November, 1892, unmindful of its contract obligations with your orator and others, through its General Assembly undertook to tax all of the banks in the State in a manner different from that prescribed in the contract hereinbefore set out, and also to subject them to all manner of local taxation, the total tax for State and municipal purposes thus provided for being very much more onerous than the tax provided for under the "Hewitt bill" approved May 17, 1886. As applied to your orator the tax under the act of November 11, 1892, before referred to will exceed the tax which it would have to pay under the "Hewitt bill" by $10,000.00. The particular method of assessment and taxation prescribed in the act of November 11, 1892, and now attempted to be enforced, will be hereafter more at length set out.

Par. 4. Your orator shows that early in the year 1894, and before the 4th of May, 1894, the defendant, The City of Louisville, claiming to act under the authority of the statute governing cities of the first class, and of its ordinances adopted in pursuance thereof, demanded of your orator and of every other bank and trust company in the city of Louisville, a tax equal to four per cent. of its gross receipts, and this demand being refused, legal proceedings were commenced in the city court of Louisville in behalf of the city against all of said banks and trust companies, including your orator. At that date the tax upon the gross receipts of the banks, if enforceable, was payable to the sinking fund of the city of Louisville, and with a view of embar-assing the sinking fund of the city as little as possible, the banks through their committee, held a meeting with the commissioners of the sinking fund, and it was agreed between the city of Louisville and its sinking fund commissioners upon the one part, and the banks and trust companies of the city of Louisville including your orator upon the other, that pending the litigation which by the agreement was to be inaugurated, and without prejudice to the right of the banks, they would make payments and loans to said sinking fund as follows:

5 First. The sinking fund was to accept from each of said banks and trust companies a payment equal to the difference between the amount which the banks and trust companies would have to pay to the State under the present law and the amount which they would be required to pay for State taxes under the provisions of the "Hewitt bill." This sum it was provided should be an actual payment and not be repaid under any circumstances, but its payment was not in any manner, or to any extent to prejudice the banks or trust companies paying it, or be taken as a waiver of any legal right which they might have in the premises.

Second. In addition to making the above payments the banks and trust companies, save those which were to be selected to test the question involved, should each lend to the sinking fund a sum which added to said payment would equal four per centum of its gross earnings during the year 1893, and the sinking fund would execute for said loans its obligations agreeing to repay the same with interest at four per centum per annum, when, and if, it should be finally adjudged by the court of last resort that said banks or trust companies were not liable to pay the license fee, required by the ordinance aforesaid, but if it should be finally adjudged that they were liable to pay said license fee, then said loan should be taken and deemed as a payment of said license fee, and the obligation to repay same should be void.

Third. It was agreed that the banks or companies selected to test the questions involved would each lend the sinking fund a sum equal to four per centum of the gross earnings for the year 1893, and would receive therefor the obligations of the sinking fund as above described.

Fourth. It was further agreed that that arrangement was entered into with the understanding that the banks and companies would institute without delay, and diligently prosecute such actions as might be necessary to settle and adjudge the right and liabilities of the parties in the premises, and pending such proceedings the sinking fund would not prosecute them or any of them for doing business without license.

The substance of this agreement was spread at large upon the records of the sinking fund, and a copy thereof is filed herewith as part hereof marked A.

As further *evidence* of the contract at that time made between the City of Louisville and its sinking fund, and the various banks and trust companies, including your orator of the city, it was agreed in writing by said parties in substance that in order to effectually test the question as to all of said banks and trust companies they were divided into three classes, it being understood that all who accepted the provisions of the said "Hewitt bill" would fall in one or the other of the classes named, to wit:

A. Banks whose charters had been granted prior to 1856.

B. Banks whose charters had been granted subsequent to 1856.

C. National banks.

It was understood that the trust and title companies which had

accepted the provisions of the "Hewitt bill" would fall in class B above named.

It was further agreed that if any bank in any class should eventually fail to establish the existence and validity of the contract which it was claimed was made under the "Hewitt bill," that all of that class should thereafter regularly and promptly submit to the existing laws and pay their taxes. And it was also agreed that if any bank of any class should succeed in establishing the contract and the validity thereof under the "Hewitt bill" that that should exempt all banks and companies falling within that class from the payment of taxes, except as provided in the "Hewitt bill."

This agreement was signed by the president of the sinking fund, and by the attorney for the city under the authority and direction of the mayor and the board of sinking fund commissioners, and by the counsel who represented the banks in said litigation.

On the faith of this agreement as outlined in the resolution spread upon the records of the sinking fund, and more at large set out in the contract duly executed, the various banks and trust companies (including your orator) of the city of Louisville paid into the sinking fund the amounts of taxes claimed against them, under the terms and conditions named in the minutes of the sinking fund commissioners heretofore referred to; and at a still later date, and in further reliance upon said agreement, the said banks and companies, including your orator, except those already involved in the test cases, paid the whole amount of the taxes claimed against them by the city of Louisville without reservation, until the question should be finally disposed of. This was done without prejudice to the rights of the banks and trust companies, and was not to be deemed a waiver by the banks or trust companies of any of their claimed rights, but was done to prevent confusion from coming into the management of the sinking fund, as the taxes against the banks claimed by the city had been transferred to the sinking fund of said city. It was agreed that these payments should not last longer than the final decision in favor of the banks if such decision should be rendered.

A copy of the contract aforesaid with the minute aforesaid is filed herewith as part hereof marked A.

6 The amount paid by the banks and trust companies to the city under said agreement is over $150,000, no part of which has ever been refunded by said city.

Par. 5. Your orator further shows that with a view of testing every phase of the question so that the decision when rendered would determine the liability of every bank and trust company in the city of Louisville, three suits were brought pursuant to the contract aforesaid. The Bank of Kentucky, whose charter was granted prior to 1856, during which year a general law was adopted reserving the right to amend or repeal all charters or amendments thereafter granted unless a contrary intent was plainly expressed, brought suit in which it represented itself and the Bank of Louisville, which also had a charter granted prior to 1856. The Louisville Banking Company had a charter from the State granted subsequent

to the year 1856 but before the passage of the "Hewitt bill," and it brought a suit in which it represented all the banks and trust companies in the city whose charters were granted by the State since 1856; and the Third national bank also brought its suit, in which it represented all the national banks of the city.

In these suits each of the banks set up the adoption of the "Hewitt bill" with its various provisions, and the fact that each of them had assembled their stockholders to consider the question whether or not it would accept the provisions of the "Hewitt bill," and the further fact that the said stockholders, a majority of all of them acting in the affirmative, had accepted the provisions of the "Hewitt bill," and had certified the same to the governor, and had thereafter regularly made the reports and payments as provided for in the "Hewitt bill," and it was asserted in each case that the act of May 17, 1886, known as the "Hewitt bill," together with the action of each bank thereon accepting the same, constituted a valid and irrepealable contract, lasting during the charter life of each bank and that the action of the State in undertaking to subsequently tax the banks by a different method and in a more onerous way, was in violation of the Federal Constitution, which forbids a State bank from passing a law impairing the obligation of a contract. Such proceedings were had that the Jefferson circuit court adjudged that the Bank of Kentucky had a contract in the "Hewitt bill" which was irrepealable, but that the Louisville Banking Company and the Third national bank did not have, and the petitions of these two banks were each dismissed. From the judgment of the Jefferson circuit court the city of Louisville prosecuted its appeal against the Bank of Kentucky; and the Louisville Banking Company and the Third national bank each prosecuted its appeal against the city of Louisville. These suits though really against the city of Louisville were each brought against R. H. Thompson, judge of the police court of the city of Louisville, that being the method pointed out by the law governing cities of the first class, as a means of testing the validity of any city ordinance.

In the court of appeals, which is the court of final resort in the State of Kentucky, the city of Louisville was represented by its corporation counsel and the Commonwealth of Kentucky appeared by its attorney general and by oral argument and printed brief opposed the contention of the several banks. The city and the State through their respective official attorneys both insisted that none of the banks or trust companies had any contract under the "Hewitt bill," and that if they did have at one time, the State had a perfect right to retire from it under the sixth section of the article relating to banks, which declared that this "act shall be subject to the provisions of section 8, chapter 68 of the General Statutes."

The only questions which were submitted to the circuit court and the court of appeals, were—

1st. Whether or not the "Hewitt bill," coupled with the acceptance thereof by the several banks and trust companies, and the

payment of taxes thereunder, constituted a contract between the State and the several banks and trust companies.

2d. If it did, then what was the extent of the duration of that contract.

It was contended by the banks and trust companies, first, that they did have a contract growing out of the acceptance of the "Hewitt bill," and second, that the contract was irrepealable by the State and lasted throughout the corporate existence of the several banks and trust companies. These being the only questions involved, the court of appeals of Kentucky after a most elaborate argument, and the most thorough and painstaking consideration, determined and adjudged in accordance with the contention of the several banks and trust companies,

First. That the "Hewitt bill" and the acceptance thereof and the action thereunder by the banks did constitute a contract between the banks and the State, and,

Second. That this contract was irrepealable in its nature and lasted throughout the charter existence of the several banks and trust companies.

A transcript of the record and proceedings in your orator's suit against R. H. Thompson, judge of the police court of the city of Louisville, is filed herewith as part hereof, marked "B."

7 Upon the issuing of said mandate in the cases of the Louisville Banking Company and Third national bank judgments were entered in the Jefferson circuit court, in pursuance to said mandate and the respective prayers of said petitions.

Certified copies of said orders are also filed with the transcript of the records in the cases above named. Wherefore your orator pleads and relies upon said former adjudication as a bar to any further claim by or on behalf of the city of Louisville against your orator for taxes except under and in accordance with said act of May 17, 1886, known as the "Hewitt bill."

Par. 6. Your orator further shows that by an act passed by the General Assembly of the Commonwealth of Kentucky on the 11th of November, 1892, it is provided in substance that every incorporated bank and trust company shall, in addition to other taxes imposed on it by law, annually pay a tax on its franchise to the State and a local tax thereon to the county, incorporated city, town and taxing district where its franchise may be exercised. The auditor, treasurer and secretary of state was by said act constituted a board of valuation and assessment for fixing the value of said franchise. It is further provided that in order to determine the value of the franchise the banks and trust companies shall each file reports on or before the first day of March in each year, which reports shall be made up and include the 31st day of the preceding December. These reports it is provided shall be verified by the president, cashier, secretary, treasurer or manager or other chief officer, in such form as the auditor may prescribe, showing the following facts, viz: The name and principal place of business of the company; the amount of capital stock; the number of shares; the amount of stock paid up; the nominal and real value thereof; the highest price at which such stock was

sold at a *bona fide* sale within twelve months next before the 15th day of September of the year in which the statement was required to be made; the amount of surplus funds, and undivided profits, and the value of all other assets; the total amount of indebtedness as principal; the amount of gross or net earnings or income, including interest on investments, the income from all other sources for twelve months next preceding the 15th day of September of the year in which the statement is required; the amount and kind of tangible property in the State, and where situated, assessed or liable to assessment in the State, and the fair cash value thereof, estimated at a price it will bring at a fair voluntary sale; and such other facts as the auditor may require.

Upon this information, and such other information as the board can obtain, it is authorized to fix the value, for purposes of taxation, upon the franchise of such banks and trust companies. It is further provided that the auditor of the State at the expiration of thirty days after the final determination of such values shall certify to the county clerk of the counties when any portion of the corporate franchise of such banks and trust companies shall be liable to local taxation, the amount thereof liable for county, city, town or district tax, and such certificate, it is provided, should by each county clerk be filed in his office, and be by him certified to the proper collecting officer of the county, city, town or taxing district for collection.

It is further provided that as to banks and trust companies their taxes assessed by the State board of valuation and assessments, as before described, shall be due and payable on the 1st of July succeeding such report.

It is further provided that in the event the banks and trust companies failed to make such report and pay such taxes, a penalty of ten per cent. on the amount of the tax shall attach, and thereafter such tax shall bear interest at the rate of ten per cent. per annum, and any bank or trust company failing to pay its taxes, penalties and interest after becoming delinquent, shall be deemed guilty of a misdemeanor, and on conviction shall be fined $50.00 for each day the same remains unpaid, to be recovered by indictment or civil action of which the Franklin circuit court shall have jurisdiction.

Your orator further respectfully submits to the court that this scheme of taxation contained in the act of November 11, 1892, above described, impairs the obligation of its contract, and is for that reason in violation of the provision of the Federal Constitution prohibiting a State from impairing the obligation of a contract. And your orator further submits that said scheme of taxation is also in violation of the 181st section of the constitution of the State of Kentucky, which declares that the "General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but may, by general laws, confer on the proper authorities thereof respectively the power to assess and collect such taxes."

Your orator respectfully shows that the tax which the city of Louisville claims the right to collect and is threatening to collect from your orator has not been assessed by the said city of Louisville,

but the assessment is required by the law to be made by the board of valuation and assessment, consisting of the defendants Stone, Finley and Long, acting in their capacities, respectively, as auditor, secretary, and treasurer of the State.

Your orator says that this board thus constituted will, unless restrained by this honorable court, proceed to assess your orator in the manner pointed out by the act of November 11, 1892, when it has no lawful right to do so, and it will thereby cast a cloud upon
8 your orator's right to pay taxes under and in accordance with its contract, and the said auditor will, unless restrained, certify said assessment to the county clerk of Jefferson county, who will in turn certify the same to the tax collector of the city of Louisville, and said city will attempt to collect from your orator a tax in favor of said city upon said assessment, and thus your orator will be subjected to harassment and litigation.

And furthermore, your orator says that if said assessment be not restrained and is allowed to be made, the State of Kentucky will claim that unless your orator pays the taxes according to the said legal scheme for taxation devised by the State, that your orator is subject to a penalty of ten per cent, and that the taxes thereafter should carry ten per cent. per annum interest; and furthermore that your orator would be liable to a penalty of $50 a day for each day that the taxes, according to the said illegal scheme, remains unpaid. The result will be that unless restrained your orator will be improperly annoyed and harassed with litigation, and the value of its stock will be greatly impaired, and its stockholders injured by the suits instituted by the city and State in their attempt respectively to enforce as against your orator the taxes attempted to be imposed and penalties denounced, by the statute.

Your orator shows that the State taxes based on the assessment of your orator's franchise exceeds the sum of $2,000.00 exclusive of interest and cost and the taxes claimed by the city of Louisville based on the assessment of your orator's franchise exceeds the sum of $2,000.00 exclusive of interest and cost.

Your orator respectfully shows that the city of Louisville is insisting that the auditor of the State, the defendant Samuel H. Stone, shall certify to the county clerk of Jefferson county the assessment illegally made, or to be made by the board of valuation and assessment, so that its tax collector may endeavor to enforce as against your orator and the other banks and trust companies in the city the taxes for city purposes, and your orator further shows that the said auditor of the State, Samuel H. Stone, has threatened to so certify said assessment, and will, unless restrained, certify said assessment for the various years 1895, 1896 and 1897 to the county clerk of Jefferson county, and said clerk will certify the said assessment to the tax collector of the city of Louisville.

Par. 7. Your orator respectfully shows to the court that the existing laws of the State do not provide for taxing the shares of stock of your orator as permitted by the act of Congress, but attempts to tax its franchise granted by the Congress of the United States and its other intangible property, such as its surplus, undivided profits

and investments, without lawful right to do so, and contrary to the act of Congress in such cases made and provided. Your orator has never consented to this method of taxation, but has always protested against the same as illegal and contrary to the act of Congress; and your orator respectfully submits that said statute of the State of Kentucky is repugnant to the act of Congress in such cases made and provided, and because of said repugnancy is void and of no binding force as against your orator.

Your orator further shows that there is no other law of the State of Kentucky providing for the taxation of banks, except for the taxation of their tangible property.

Your orator further shows that in addition to the complication in reference to taxing the old banks in the manner hereinbefore set out, the national banks in the State claimed the right to be put upon a footing as to taxation upon an equality with the four old banks, and as the capital of the four old banks was about equal to the combined capital of all the other State banks, the courts of Kentucky held that they could not be subjected to a heavier burden of taxation than said old banks. And now your orator respectfully submits to the court that in view of the fact that said four old banks

9 have a capital stock about equal to the combined capital of the other State banks, that your orator is entitled to be put upon a footing as to taxation equally favored with said old banks, and cannot be taxed at a higher rate than said banks without an unjust discrimination against your orator and the other national banks, contrary to the act of Congress; and your orator especially insists that this is true in view of the fact that the Commonwealth of Kentucky had the power to keep all the banks upon the same footing as to taxation as hereinbefore specifically set out, and having such power has deliberately undertaken to violate its contract with said banks, and if as a result of the voluntary action of the State it shall be held that the said four old banks have been restored to their original contract right to discharge themselves of all taxation by the payment of fifty cents on each share of their stock in lieu of all other taxation, then your orator insists that it and the other national banks of the city of Louisville, being located in the same city with two of the old banks above named, is entitled under the act of Congress to be put upon the same footing as to taxation with said old banks.

To the end therefore that your orator may not be subjected to the false claims and suits which will be instituted by the city and State, and that it may be spared the irreparable injury which it will suffer, and that its property and its right of contract heretofore fully stated shall not be subjected to an illegal cloud, your orator prays for a writ of subpœna against the defendants, Samuel H. Stone, auditor, Charles Finley, secretary, George W. Long, treasurer of the State of Kentucky, and The City of Louisville, to appear and make full and true answer to this bill (but not under oath, answer under oath being hereby waived), and that an injunction *pendente lite* be granted commanding the said Samuel H. Stone, Charles Finley and George W. Long in their respective official capacities to

refrain from assessing or attempting to assess the franchise of your orator, or any of the property of your orator, and that the said Samuel H. Stone, auditor aforesaid, be restrained from certifying any assessment which has been or may be made of the franchise or property of your orator to the county clerk of Jefferson county, or any other officer, and that the defendants, including the City of Louisville and each of them be restrained from collecting or attempting to collect any taxes based upon said illegal assessment, whether due to the State of Kentucky or to the city of Louisville, until the final order and determination of this court, and that upon such final hearing a decree be made establishing the contract right of your orator to be taxed in the method prescribed by the act of May 17, 1886, known as the "Hewitt bill," and not otherwise, and perpetually enjoining the defendants from assessing or certifying any assessment made of your orator's franchise or properties, and from collecting any of said taxes or penalties in behalf of either the city or State; and for all general and equitable relief to which your orator may be entitled.

HELM & BRUCE,
Solicitors for Complainant.

H. W. Reese says he is the president of complainant, and that the statements contained in the foregoing bill are true.

H. W. REESE.

Subscribed and sworn to before me by H. W. Reese this 17th day of April, 1897.

ARTHUR PETER,
Notary Public for Jefferson County, Kentucky.

My commission expires January 15, 1898.

10 Exhibit "A" of bill of complaint is as follows:

SINKING FUND OFFICE, *Feb.* 13, 1894.

A committee, consisting of Messrs. Thomas L. Barrett, John H. Leathers, and George W. Swearingen, appeared before the board on behalf of the banks, who are members of the Louisville clearing-house, and stated that it was the purpose of said banks to resist the payment of the license fee demanded of them under the license ordinance approved January 29, 1894, on the ground that said banks were not legally liable to pay the same, but in order to save the sinking fund from any embarrassment occasioned by their refusal to pay said license fee, the banks, with two or three exceptions, were willing to enter into an arrangement whereby they would pay a part of the amount demanded of them and lend the sinking fund the balance thereof, to be repaid, with interest at four per centum per annum, if it was finally decided and adjudged that the banks were not liable to pay said license fees.

After discussion, the president was, on motion of Mr. Tyler, seconded by Mr. Summers, authorized to enter into the following arrangement with the different banks, *true*, and title companies, who

will be subject to the payment of the license fees if the license ordinance is finally adjudged to be valid and enforceable:

First. To accept from each of said banks and companies a payment equal to the difference between the amount they now pay to the State for State taxes and the amount they would be required to pay for State taxes under the provisions of what is known as the "Hewitt bill." This sum shall be an actual payment, not to be repaid under any circumstances, but its payment shall not in any manner, or to any extent, prejudice the banks or companies paying it or be taken as a waiver of any legal right which they have in the premises.

Second. In addition to making the above payments, the said banks and companies, save those selected to test the question involved, shall each lend the sinking fund a sum which added to said payment, will equal four per centum of its gross earnings during the year 1893, and the sinking fund will execute for said loans its obligations agreeing to repay the same with interest at four per centum per annum, when, and if, it shall be finally adjudged by the
11 court of last resort that said banks or companies are not liable to pay the license fee required by the ordinance aforesaid, but if it is finally adjudged that they are liable to pay said license fee, then the said loan shall be taken and deemed as a payment of said license fee, and the obligation to repay the same shall be void.

Third. The banks or companies selected to test the questions involved will each lend the sinking fund a sum equal to four per centum of their gross earnings for the year 1893, and will receive therefor the obligations of the sinking fund as above described.

Fourth. This arrangement is to be entered into with the understanding that the said banks and companies will institute without delay and diligently prosecute such actions as may be necessary to settle and adjudge the right and liabilities of the parties in the premises, and pending such proceedings the sinking fund will not prosecute them or any of them for doing business without license.

A true copy.
Attest:

J. M. TERRY,
Secretary & Treasurer.

Stipulation between the city of Louisville, the commissioners of the sinking fund of the city of Louisville, and the banks, trust, and title companies of the city of Louisville.

It is agreed between the city of Louisville, the commissioners of the sinking fund of the city of Louisville, represented by H. S. Barker, city attorney, acting under the advice and by the authority of the board of sinking fund commissioners, given at a regular meeting of said board, and the mayor of the city of Louisville, on the one part, and the various banks, trust and title companies of the city of Louisville, acting by Humphrey & Davie and Helm & Bruce, their attorneys, of the other part:

First. That in February, 1894, it was agreed between the city of Louisville and the board of sinking fund commissioners, acting together in the interests of the said city, and the various banks, trust and title companies, acting through their committee, to wit, Messrs. Thomas L. Barrett, John H. Leathers, and George W. Swearingen, and their counsel, to wit, Mess. Humphrey & Davie and Helm & Bruce, that the question of the liability of said banks and
12 trust and title companies to pay municipal taxes, either license or ad valorem, otherwise than as provided by the revenue laws, commonly known as the Hewitt bill, should be tested by appropriate litigation looking to that end.

Second. In order to effectually test the question as to all of said companies they were divided into three classes, it being understood that all who had accepted the provisions of the said Hewitt bill would fall in one or the other of the classes named, to wit:

A. Banks whose charters had been granted prior to 1856.

B. Banks whose charters had been granted subsequent to 1856.

C. National banks.

It being understood that the trust and title companies which had accepted the provisions of the Hewitt bill would fall in class B, above named.

Third. In pursuance of that agreement the sinking fund commissioners caused to be issued warrants against the Bank of Kentucky, representing class A; the Louisville Banking Company, representing class B, and the Third national bank, representing class C, and these banks respectively applied for writ of prohibition against the city court of Louisville proceeding with the hearing, that being the manner pointed out by the city charter for testing the validity of city ordinances.

It was distinctly understood and agreed at that time, and this agreement was made for the best interest of all parties to it, that if any bank in any class should eventually fail to establish the existence and validity of the contract which it was claimed was made under the Hewitt bill, that all of that class should thereafter regularly and promptly submit to the existing laws and pay their taxes. And it was also agreed that if any bank of any class should succeed in establishing a contract and the validity thereof under the Hewitt bill, that that should exempt all banks and companies falling within that class from the payment of taxes, except as provided in the Hewitt bill.

Fourth. On the faith of this agreement all of the banks and companies aforesaid paid into the sinking fund the amounts of taxes claimed against them under the terms and conditions named
13 in the minutes of the sinking fund commissioners of February 13th, 1894, an attested copy of which is hereto attached as part hereof, but at a later date and in further reliance upon said agreement all said banks and companies, except those actually involved in the test cases, paid the whole of the amount of taxes

claimed as against them by the city of Louisville without reservation until the question thus raised should be finally disposed of.

HUMPHREY & DAVIE,
HELM & BRUCE,
For the Banks, Trust, & Title Companies of the City of Louisville.
H. S. BARKER, *City Att'y.*

Approved:
C. H. GIBSON,
Pres't Com'rs Sinking Fund, City of Lou.

A true copy.
Attest: HUSTON QUIN.
ARTHUR PETER.
M. McLOUGHLIN.

14 EXHIBIT "B" WITH THE BILL OF THIRD NATIONAL BANK *vs.* STONE.

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the Kentucky court of appeals, at the capitol, in the city of Frankfort, on the first day of June, A. D. 1895, Chief Justice W. S. Pryor, Judges Joseph H. Lewis, James H. Hazelrigg, John R. Grace, Thomas H. Paynter, B. L. D. Guffy, and George B. Eastin sitting.

THIRD NATIONAL BANK, Appellant,
vs.
THE CITY OF LOUISVILLE, R. H. THOMPSON, Judge of the Police Court of the City of Louisville, Appellees.

Be it remembered that heretofore, to wit, on the 24th day of August, 1894, the appellants, by their counsel, filed in the office of the clerk of the court of appeals a transcript of a record in words and figures following, to wit:

STATE OF KENTUCKY, *Jefferson County:*

Pleas before the Honorable Emmet Field, judge of the Jefferson circuit court, common pleas division, at the court-house in Louisville, Ky., on the dates hereinafter mentioned.

Be it known that heretofore, to wit, on the 18th day of June, 1894, came plaintiff by Humphrey & Davie, &c., attorneys, and filed its petition in the office of the clerk of the aforesaid court.

Said petition is as follows, to wit:

Jefferson Circuit Court.

THIRD NATIONAL BANK, Plaintiff,
vs.
R. H. THOMPSON, Judge of the Police Court of the City of Louisville, Defendant. } # 4685.

The plaintiff, The Third National Bank, states that it is a banking corporation located in the city of Louisville, and organized and doing business under that law of the United States known as
15 the national bank act; that its capital stock at the date hereinafter mentioned was $300,000, divided into shares of $100.00 each, which shares of stock are owned by and in the hands of divers persons.

That the defendant R. H. Thompson is judge of the police court of the city of Louisville.

The plaintiff says that under the national bank act, which is its act of incorporation, it is declared that its stock and the stock of all national banks shall not be taxed at a greater rate than is assessed upon other moneyed capital similarly employed in the State.

The plaintiff says that the bank of Kentucky with its branches, the Bank of Louisville, the Northern bank with its branches, and the Farmers' bank with its branches, all corporations of Kentucky, were duly chartered and organized prior to the year 1856; that by said charters the said banks and each of them entered into a contract with the State by which it was agreed that said bank would pay fifty cents on each $100 of stock held and paid for in it, which should be in full of all tax or bonus, and this contracy was in full force and virtue at the time of the organization of the plaintiff, and by the laws of Congress as construed, the plaintiff was entitled to be placed upon an equally favored footing and it was not within the province of the legislature of Kentucky to put a greater burden upon it than was put upon other capital, in the hands of the banks named, similarly employed.

The plaintiff says that from the date of its organization it each and every year paid said fifty cents on each share of its stock as required by law up to the year 1886. Plaintiff states that during the most, if not the whole, of said time said rate of taxation was higher upon said bank than was imposed by the State upon other persons and corporations except banking corporations.

By an act approved May 17th, 1886, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," it was provided that the cashier of all State and national banks should annually, on the first day of July of each year, make report of their condition to the auditor, and should pay into the State treas-
16 ury seventy-five cents on each share of its capital stock and should in addition pay into said treasury, ona its surplus undivided profits and accumulations in excess of ten per centum of ots capital stock, a tax at the same rate as the real property should be assessed. And it was distinctly provided by said act that the said taxation should be in full of all tax, state and municipal, except that the real estate or building owned and used by the banks in

conducting their business should not be exempt from taxation for county or municipal purposes, but that such real estate alone might be taxed for county and municipal purposes as other real estate is taxed. As a condition to its operation upon any of the banks referred to therein said act in the fourth section thereof provided as follows:

"SEC. 4. That each of said banks, institutions and corporations, by its proper corporate authority with the consent of a majority in interest of a quorum of its stockholders at a regular or called meeting thereof may give its consent to the levying of said tax and agree to pay the same as herein provided and to waive and release all right under the act of Congress or under the charters of the State banks to a different mode or smaller rate of taxation, which consent and agreement to and with the State of Kentucky, shall be evidenced by a writing under the seal of said bank and delivered to the governor of the Commonwealth; and upon such agreement and consent being delivered and in consideration thereof such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of the bank."

The consent provided for by this act and the notice to the governor was further required to be given before the meeting of the next General Assembly, provided the tax should be paid by the bank from the passage of the act.

At a meeting of the stockholders of the plaintiff's bank held on the 25th day of June, 1887, a quorum of the stockholders and a majority thereof being present, said stockholders and a majority in interest thereof did give their consent to the levying of said tax and the waiver and release of all right under its charter to a different mode or a smaller rate of taxation and said consent of the
17 bank to the waiver and release aforesaid, and the said agreement was certified in writing, under the seal of the bank, by the proper corporate authority, to the governor of the Commonwealth and delivered to him before the next meeting of the General Assembly after the passage of said act. There is filed herewith as part hereof a duly certified copy of said resolution, consent, and agreement, marked A.

The plaintiff bank also, through its cashier, made its report and paid into the State treasury on the first day of July, 1887, the full tax required by said act, and in conformity with said act has made its report in proper form to the auditor of public accounts on the first day of July in each and every year up to this time, and has, until the year 1893, paid to the State treasury on each first day of July in every year from 1887 the full tax required by said act, being seventy-five cents on each share of its capital stock, and a tax at the same rate as real property was assessed by the State upon its surplus undivided profits and accumulations in excess of ten per cent. of its capital stock. It was only prevented from paying the whole of said tax on the first day of July, 1893, by the refusal of the auditor, the fiscal agent of the State, to receive the same.

Plaintiff says that at the times herein stated it did not own nor

has it since owned any real estate of any character whatever in this city or elsewhere.

On the first day of July, 1893, the plaintiff's cashier did as he regularly had done for years before, make a written report to the auditor of public accounts, verified by his oath, required by law, of the true amount of the capital of the bank and of its surplus undivided profits and accumulations, and did then and there successively tender and offer to pay into the treasury of the State the sum of $——, the full amount of the tax required and due under the aforesaid act to amend the revenue laws, approved May 17th, 1886, but said offer and tender was refused and rejected by the said auditor of public accounts, the fiscal agent of the State, under the claim made by him, that the provisions of the contract heretofore quoted, made under the act to amend the revenue laws, approved May 17th, 1886, had been superseded and repealed by the new constitution of the State of Kentucky, which went into operation on the 28th of September, 1891, and by the act of the legislature entitled "An act relating to revenue and taxation," which went into effect on November 11th, 1892, the said auditor, as the agent of the State, refused and declined to accept any other sum than the sum of $—, the amount claimed by him to be due to the State on the franchise of said bank under the provisions of the aforesaid act of November 11th, 1892. The plaintiff, protesting against said bank as illegal, in its application to it, acceded to the said auditor's demand and under protest, as aforesaid, paid into the State treasury the last-named sum.

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Plaintiff further states that by an act entitled "An act for the government of cities of the first class," approved July 1st, 1893, and which is applicable to the city of Louisville, it was provided, among other things, that the general council may, by ordinance, provide for the following licenses to be paid into the sinking fund, with adequate penalties, for doing business for following the calling, occupation, profession, or using or holding or exhibiting the article herein named without the required license: For each bank, trust and title company the license tax shall not be less than four nor more than six per cent. of its gross earnings, exclusive of rent from real estate paying a tax to the city.

In pursuance of the said charter, as aforesaid, the general council of the city of Louisville did pass an ordinance, which was approved January 29th, 1894, by which it was provided, among other things, that hereafter the following licenses shall be paid into the sinking fund of the city of Louisville: Each bank and trust company shall pay an annual license tax of four per cent. of its gross earnings, exclusive of rent from real estate paying taxes in the city of Louisville.

The plaintiff states that the said act granting a charter to cities of the first class and the said ordinance passed in pursuance thereof are both unconstitutional and void, in that they impair the obligation of the contract between the plaintiff and the Commonwealth of Kentucky as embodied in its agreement, as aforesaid, made under

the said revenue law of May 17th, 1886, and are in violation
19 of the Constitution of the United States, and especially the section thereof providing that no State shall pass any law impairing the obligation of a contract.

The plaintiff avers that the said act chartering cities of the first class and the said ordinance, as aforesaid, are both unconstitution- and void, as above set forth; that the agreement executed by it, as heretofore stated, constituted a contract between the State, on the one part, and the plaintiff bank and its stockholders, on the other part, continuing during the legal existence of the corporation, and the State possessed no power or right to repeal or annul said agreement or the rights conferred thereunder limiting the right of the State to impose a tax on the plaintiff bank in excess of the amount states in the aforesaid act of May 17th, 1886, without the consent of said bank and its said stockholders.

The plaintiff further states that it did give its consent to the said act of May 17th, 1886, and did, upon the considerations therein recited, waive and release its right to a different mode or smaller rate of taxation than is therein provided. Said consent and waiver was made on the belief that by the said act it was intended to put in operation a permanent legislative policy governing the taxation of all banks then existing which would accept its provisions, to endure at least during the corporate existence of all assenting banks.

The Bank of Kentucky, the Bank of Louisville, the Northern bank, and the Farmers' bank having all agreed to accept the provisions of the said act of May 17th, 1886, this plaintiff also agreed to do the same, and accordingly did so. Now the plaintiff states that in view of the action of the State in disregarding its contract and endeavoring to put into effect a system of taxation on all the banks in the State, including plaintiff, much higher and more onerous than that described in the act of May 17th, 1886, in that all of said banks, including the plaintiff, are required to pay full municipal taxes in addition to State taxes, the consideration which induced the plaintiff to consent to be taxed und- and in accordance with the terms of said act has wholly failed, and it insists and submits to the court that by the action of the State the Bank of Kentucky, the Bank of Louisville, the Northern Bank of Ken-
20 tucky, — Farmers' bank have been restored to their original charter right to be discharged from all kinds of taxation by the payment of fifty cents on each share of their capital stock, and they are respectively claiming to be so restored to their original charter rights, and that, by reason of that fact, this plaintiff, being entitled to be put upon an equally favo- footing, is likewise entitled to be discharged from all kinds of taxati- by the payment of fifty cents on each share of its capital stock; but if this be not true, still the plaintiff insists and submits to the court that it cannot be taxed in excess of the amount named in the contract duly executed by this bank under its corporate seal and delivered to the governor of the Commonwealth, in accordance with the provisions of said act of May 17th, 1886.

Plaintiff states that it was provided in said ordinance that all

licenses should be paid in advance, and in every case where it is based upon a percentage of earnings or income of the corporation the computation shall be made upon the earnings or income of said corporation for the year immediately preceding the time the license is to be dated or is payable, and the corporation to whom the license shall be granted shall at the end of the year pay the amount due for the excess over the estimates made at the time of issuing the license under the same penalty as if it had failed or refused to secure a license; and it was further provided that any corporation violating any of the provisions of said ordinance shall be fined not less than $5 nor more than $100 for each offense each day that the violation is continued to constitute a separate offense. The plaintiff states that, notwithstanding the premises aforesaid, the commissioners of the sinking fund of the city of Louisville have demanded of the plaintiff that it shall pay to them the sum of $—, and upon its failure to pay have caused a warrant to be issued out of the police court of the city of Louisville, wherein this plaintiff is charged with the offense of conducting a bank without a license, and, unless prohibited by this honorable court, the defendant R. H. Thompson, judge of the police court of the city of Louisville aforesaid,
21 will cause this plaintiff to be tried under the said warrant, and will cause the said plaintiff to be fined for failing to comply with the said ordinance and not procuring a license to do business in accordance therewith.

The plaintiff further states that, as aforesaid, the said ordinance is null and void and of no effect, an- the said R. H. Thompson, judge of the police court of the city of Louisville, has no rightful power or authority to enforce the same or to cause this plaintiff to be tried upon the said warrant.

Wherefore plaintiff prays that this court, by a writ of prohibition or order addressed to the police court of the city of Louisville, prohibit it from proceeding in the matter of the warrant sued out in said court against plaintiff for failure to pay said license if and that on final hearing it be adjudged that said license, ordinance, and said act for the government of cities of the first class, in so far as they authorize a tax in any form to be levied against and collected from plaintiff, be declared unconstitutional and void, and for all general and proper relief.

HUMPHREY & DAVIE,
HELM & BRUCE,
Att'ys for Plaintiff.

H. W. Reese says he is president of plaintiff, and that the facts in the foregoing petition are true as he believes.

H. W. REESE.

Subscribed and sworn to before me by H. W. Reese this 18th day of June, 1894.

A. F. MERMAN, [SEAL.]
N. P., J. Co., Ky.

Commission expires January 26th, 1898.

And thereupon the clerk issued summons and copy, which is as follows:

Jefferson Circuit Court.

The Commonwealth of Kentucky to the sheriff of Jefferson county, Greeting:

22 We command you to summon R. H. Thompson, judge of the police court of the city of Louisville, to answer a petition filed against him in our Jefferson circuit court by Third National Bank, and warn him that upon failure so to do for twenty days after service hereof, if in Jefferson county, or for thirty days, if elsewhere in the State, judgment may be rendered by default or answer compelled or proof taken, at petitioner's option, and make due return hereof within sixty days from date hereof.

Witness John S. Cain, clerk of said court, this 18th day of June, 1894.

JOHN S. CAIN, *Clerk*,
By E. WHITEHEAD, *D. C.*

The sheriff returned said summons with the following endorsement thereon:

I accept the service of the within summons this 18th day of June, 1894.

R. H. THOMPSON,
Judge Police Ct.

At a court held for the court aforesaid on the 19th day of June, 1894, came parties, by counsel, and said case, being heard, was submitted, and the court, not being advised, takes time.

At a court held for the court aforesaid on the 24th day of July, 1894, the court, being sufficiently advised, filed an opinion herein. Said opinion is as follows:

Jefferson Circuit Court, Common Pleas Division.

BANK OF KENTUCKY, &c., }
vs.
R. H. THOMPSON, Judge, &c. }

These cases involved the liability of the several plaintiffs to municipal taxation. The Bank of Kentucky represents the class of banks chartered before 1856; the Louisville Banking Co. represents the banks chartered since that date, and the Third national the interests of the national banks of the city.

A bank chartered before 1856 and one whose charter is
23 subsequent to that date were made plaintiffs, because in that year the following general statute became a law:

"All charters and grants of or to corporations, or of amendments thereof, enacted or granted since the 14th of February, 1856, and all other statutes shall be subject to amendment or repeal at the will of the legislature, unless a contracry interest be therein plainly

expressed. Provided, that whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested." (Gen. Stats., chap. 68, sec. 8, p. 861.)

Before that act was passed there was no general law giving the legislature control over charters; if the right to amend or repeal was not reversed in the charter, it did not exist; but, as to charters granted since that date, the act quoted becomes a part as fully as if its was incorporated therein, unless a plain intent to exclude it is shown.

The charter of the Bank of Kentucky was approved Feb'y 22n-, 1834; that of the Louisville Banking Company Jan'y, 1867. In the charters of all the banks interested in this litigation it is provided, in substance, that at no time shall the tax exceed fifty cents on each $100 of stock therein.

In 1886 an act generally known as the "Hewitt bill" was passed to amend the revenue laws, by which it is provided that all banks in the State shall pay a tax of seventy-five cents upon the $100 of their stock and certain other taxes for which they were not theretofore liable, but knowing that the rate of taxation could not be increased beyond the limit fixed in their charters, so far as banks created before Feb'y, 1856, were concerned, without their consent, the law required of all the banks as follows:

"That each of said banks, institutions and corporations, by its proper corporate authority with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right under the acts of Congress, or under the charters of the
24 State banks, to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such bank and delivered to the governor of this Commonwealth; and upon such agreement and consent being delivered, and in consideration thereof such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of such bank.

SEC. 5. The said banks may take the proceedings authorized by section 4 of this act at any time until the meeting of the next General Assembly. Provided: They pay the tax provided in section 1 from the passage of this act.

SEC. 6. This act shall be subject to the provisions of section eight (8) chapter sixty-eight (68) of the General Statutes."

All of the banks concerned filed their written consent in due time to pay the tax thus provided for.

The present constitution seeks to have all property taxed in proportion to its value.

"All property whether owned by natural persons or corporations shall be taxed in proportion to its value, unless exempted by this constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this constitution

shall be construed to prevent the General Assembly from providing for taxation based on income, licenses or franchises." Sec. 176.

The General Assembly in the charter for cities of the first class now *proper* to adopt a license tax for banks and certain other monied corporations whereby each of them is required to pay not less than four nor more than six per cent. of its gross earnings, exclusive of rent from real estate paying a tax to the city. The city council passed an ordinance conforming to the charter requiring each bank to pay an annual license tax of four per cent.

The banks ask in this action for a writ of prohibition against the city to prevent it from enforcing the tax levied by the ordinance,
for the reason mainly that the "Hewitt bill" constitutes a
25 contract which the State has no right to violate either by constitutional provisions or legislative enactment.

As the law touching all questions raised by the demurrer of the city has recently undergone a thorough investigation by two distinguished circuit judges, who delivered carefully prepared and able opinions, I shall merely state the conclusions to which an attentive consideration of the authorities submitted by counsel has led.

As to the Bank of Kentucky and the banks represented by it there is little room for argument in this court, because in the present case of The Franklin Circuit Court *vs.* Deposit Bank, &c., 87 Ky., 387, the court of appeals decided the identical questions now presented. The city of Frankfort assessed the corporate property of the Bank of Kentucky for municipal taxation. The bank relied upon its charter to defeat the tax.

The court held that the agreement in its charter that it should pay to the State a tax of fifty cents on each of its shares of stock, and that this should be in full of all other tax, constituted a contract which cannot be violated or changed without the consent of the bank.

Referring to the Dartmouth College case, where this principal first obtained prominence, the opinion says:

"This doctrine is so firmly rooted by the decisions of the Supreme Court of the United States and so uniformly recognized by the courts of last resort of all the States that a decision by us holding the contrary would be regarded as eminently sporadic."

The Dartmouth College case was decided in 1819, and has been steadily adhered to ever since. The doctrine established by it has sometimes been questioned, but never overthrown.

It would be idle now to theorize whether or not, in view of the mighty changes that have occurred in our social polity during the three-quarters of a century which have elapsed, one legislature should be permitted to make a contract curtailing the sovereign power of taxation by which all succeeding legislatures and the law-making bodies are to be bound through all the coming years. The
Dartmouth College case is a fact in our jurisprudence, and
26 Mr. Justice Miller realized it when he said, in the opinion in the case of New Jersey *vs.* Yard, 95 U. S., 354:

"The writer of this opinion has always believed and believes now that one legislature of a State has no power to bargain away

the right of any succeeding legislature to levy taxes in as full a manner as the constitution will permit; but so long as a majority of this court adhere to the contrary doctrine he must, when the question arises, join with the other judges in considering whether such a contract has been made."

It is true that in this State such power has been taken from the legislature by constitutional provision, but contracts of that character heretofore made and not affected by the statute of 1856 are as binding and inviolable as they ever were.

The demurrer to the petition of the Bank of Kentucky will have to be overruled.

Concerning the Louisville Banking Co. and the banks it represents, it is sufficient to say that, notwithstanding the definite and formal terms of the contract entered into between them and the State by means of the "Hewitt bill," the legislature which passed that law gave them notice that the right was reserved to any succeeding legislature to amend or repeal it. "This act shall be subject to the provisions of section eight (8) of chapter sixty-eight (68) of the General Statutes."

The fact that the right was reserved by the State to repeal or modify the Hewitt bill and abrogate the contract with the banks under it presents no valid objection in their behalf.

As long as the law stood unrepealed they were entitled to enjoy all the benefits of their contract, and they were not and could not be taxed except in the manner and to the extent indicated by their written consent. The obligation rested equally upon both parties as long as it lasted.

Section 8 of chapter 68 was as much a part of the contract as if it had been embodied in the writing. This question was fully considered in Griffin *vs.* Kentucky Ins. Co., 3rd Bush, 592, and Clark *vs.* Louisville Water Co., 143 U. S., page 1. The demurrer to the petition of the banking Co. will have to be sustained.

27 The national banks *desire* all their powers from Congress and their corporate rights cannot be abridged nor in any manner interfered with by a State legislature, but with reference to taxation they occupy the same position that State banks of issue hold, the only limitation placed by Congress upon the power of the State to tax them being that they shall not be discriminated against in this particular. City National Bank of Paducah *vs.* City of Paducah, 10 Ky. Law Rep., 506.

The fact that there are banks in the State which by contracts in their charters, made before national banks came into existence, pay a smaller tax than is assessed against national banks and other similar institutions organized since the national banking act became a law can make no difference. All that is required is that as far as the State has the power to control the matter national banks shall not be taxed at a higher rate than it taxes the State banks. In the case of Lionberger *vs.* Rowe, 9 Wallace, 468, it is said:

"Congress meant no more by the second limitation in the proviso to the 41st section of the national banking act than to require of each State as a condition to the exercise of the power to tax the

shares in national banks that it should, as far as it had the capacity, tax in like manner the shares of banks of issue of its own creation.—Syllabus.

The measure had reference to prospective legislation by the States, and its object was accomplished when the States conformed, as far as practicable, their revenue systems to it. Exact conformity was required, if attainable, but the law-making power did not intend such an absurd thing as that the power of the State to tax should depend on its doing an act which it obliged itself not to do."

As the national banks will be taxed in the same manner and only to the same extent that the State banks organized since February, 1856, will be taxed, it follows that there is no discrimination against them; therefore the demurrer to the petition of the Third national will have to be sustained.

It would be more satisfactory to hold that all the plaintiffs are equally liable or that none of them is subject to municipal
28 taxation, but the law must be given as it is.

EMMET FIELD, *Judge.*

At a court held for the court aforesaid on the 24th day of July, 1894, this cause having been heard and submitted and the court being advised, it is considered by the court that the petition herein does not set forth a cause of action, and the demurrer to the said petition is sustained; and the plaintiff declining to plead further, it is adjudged that the petition of the plaintiff be, and the same is hereby, dismissed, and it is adjudged that the defendants recover of the plaintiff their costs herein expended, for which they may have execution; to all of which the plaintiff excepts and prays an appeal to the court of appeals of Kentucky, which is granted.

STATE OF KENTUCKY, }
Jefferson County. }

I, John S. Cain, clerk of the Jefferson circuit court, do hereby certify that the foregoing 19 pages, this included, contain a full, true, and complete transcript of the record and proceedings had in the case wherein Third National Bank is plaintiff and R. H. Thompson is defendant, #4685, as the same appears of record and on file in my said office.

Witness my hand this 17th day of August, 1894.

JOHN S. CAIN,
Cl'k Jeff. Cir. Ct.

Upon which transcript was endorsed the following statement:

THIRD NATIONAL BANK, Appellant,
vs.
THE CITY OF LOUISVILLE, R. H. THOMPSON, Judge of the Police Court of the City of Louisville, Appellees.
} Appeal from the Jefferson Circuit Court, Common Pleas Division.

The judgment appealed from was rendered July 24th, 1894, and is on page 19 of the record; appeal granted in court below.

HELM & BRUCE,
HUMPHREY & DAVIE,
For Appellant.
HENRY S. BARKER,
For Appellees.

29 At a court of appeals held in and for the Commonwealth of Kentucky, at the capitol, in the city of Frankfort, on the 9th day of October, A. D. 1894, the following order was made:

THIRD NATIONAL BANK, Appellant,
vs.
THE CITY OF LOUISVILLE, R. H. THOMPSON, Judge of the Police Court of the City of Louisville, Appellees.
} Jefferson.

Ordered that this case be continued for oral argument.

Afterwards, at a court of appeals held, as aforesaid, on March 5th, A. D. 1895, the following order was entered:

THIRD NATIONAL BANK, Appellant,
vs.
THE CITY OF LOUISVILLE, R. H. THOMPSON, Judge of the Police Court of the City of Louisville, Appellees.
} Jefferson.

By agreement of all the parties and on their motion, it is ordered that these 17*th* cases be heard together, and said causes, coming on to be heard, were argued by A. P. Humphrey, for the banks and Ira Julian, for the Commonwealth, counties, and cities, and laid over until tomorrow for further hearing.

Afterwards, on the 6th day of March, A. D. 1895, the following order*ed* was entered herein:

These causes, coming on to be heard, were argued by D. W. Lindsay, for the banks, W. McD. Shaw and Hugh Rodman, for the counties and cities, and laid over for further hearing on tomorrow.

Afterwards, on March 7, 1895—

These cases, again coming on to be heard, were argued by Wm. Goebel, for the banks, and H. C. Barker, for the cities and counties, and laid over for further hearing on tomorrow.

Afterwards, on March 8, 1895, these causes, again coming on to be heard, were argued by John W. Rodman and T. L. Edelen, for the banks, and laid over for further hearing on tomorrow.

30 Afterwards, on March 9, 1895, these causes, again coming on to be heard, were argued by James P. Helm, for the banks, and laid over for further hearing on next Tuesday.

Afterwards, on March 12, 1895, the following order was entered herein: These causes, again coming on to be heard, were argued by Wm. J. Hendrick, for the Commonwealth, and submitted.

Afterwards, at a court of appeals held, as aforesaid, on the 1st day of June, A. D. 1895, the following judgment was entered:

THIRD NATIONAL BANK, Appellant, *vs.* THE CITY OF LOUISVILLE, R. H. THOMPSON, Judge of the Police Court of the City of Louisville, Appellees.	Appeal from the Jefferson Circuit Court, Common Pleas Division.

The court being sufficiently advised, it seems to them the judgment herein is erroneous. It is therefore considered that said judgment be reversed and cause remanded for further proceedings consistent with the opinion herein, which is ordered to be certified to said court.

It is further considered that the appel-ants recover of the appellees their cost herein expended.

Judge- Lewis, Paynter, and Guffy dissenting.

At the same time, to wit, on June 1, 1895, the court, through Chief Justice Pryor, delivered the following opinion:

COMMONWEALTH, for Use, &c., *v.* FARMERS' BANK OF KY.	Franklin.
FARMERS' BANK OF KY. *v.* BOARD OF COUNCILMEN OF CITY OF FRANKFORT.	Franklin.
FARMERS' BANK OF KY. *v.* COUNTY OF FRANKLIN, &C.	Franklin.
BANK OF KY. *v.* ARMSTRONG, Sheriff, &c.	Franklin.
PRESIDENT, DIRECTORS, & COMPANY OF THE BANK OF KY. *v.* BOARD OF COUNCILMEN OF CITY OF FRANKFORT, &C.	Franklin.
COMMONWEALTH, for Use, &c., *vs.* BANK OF KY.	Franklin.

	SAME *vs.* DEPOSIT BANK OF FRANKFORT.	Franklin.
	DEPOSIT BANK OF FRANKFORT *vs.* FRANKLIN CO., &C.	Franklin.
	COMMONWEALTH, for Use, &c., *vs.* FRANKFORT NATIONAL BANK.	Franklin.
	SAME *vs.* STATE NATIONAL BANK.	Franklin.
31	THIRD NATIONAL BANK *vs.* CITY OF LOUISVILLE, &C.	Jefferson C. P. Div.
	LOUISVILLE BANKING CO. *vs.* SAME.	Jefferson C. P. Div.
	CITY OF LOUISVILLE, &C., *vs.* PRESIDENT, DIRECTORS, & COMPANY OF THE BANK OF Kentucky.	Jefferson C. P. Div.
	PRESIDENT, DIRECTORS, & COMPANY OF THE NORTHERN Bank of Ky. *vs.* BOURBON COUNTY.	Bourbon.
	CITY OF COVINGTON *v.* FIRST NATIONAL BANK OF COVINGTON.	Campbell.
	SAME *vs.* GERMAN NATIONAL BANK OF COVINGTON.	Campbell.
	FARMERS' BANK OF KY. *vs.* CITY OF HENDERSON.	Henderson.

(Filed June 1, 1895.)

Opinion of the Court by Chief Justice Pryor.

The Bank of Kentucky, the Northern bank, the Farmers' bank, and other State banks, the National Bank of Covington and other national banks are in this court, by their president and directors, some of them appealing from judgments imposing upon them taxation for county and municipal purposes, and others sta-ding as appellees in cases relieving them from such local burdens. The legis-

lation imposing such burdens is found in the Kentucky statutes, under the title of "Revenue and taxation," and is based on sections 174 and 175 of the present constitution. Section 174 provides:

"All property whether owned by natural persons or by corporations, shall be taxed in proportion to its value, unless exempted by this constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this constitution shall be construed to prevent the General Assembly from providing for taxation based on incomes, licenses or franchises."

Section 175 provides:

"The power to tax property shall not be surrendered or suspended by any contract or grant to which the Commonwealth shall be a party."

It is manifest, by reason of section 175, the right of the legislature no longer exists of surrendering the power to tax property or by contract to bind the State to any other mode of taxation than that found in the constitution, and all property, whether belonging
32 to corporations or individuals, must pay the same rate of taxation. The appellants in these cases (the banks) are claiming that prior to the adoption of the present constitution a contract had been entered into between them and the State by which, in consideration of the surrender by them of certain rights found in their respective charters and by their consent and agreement to pay a larger State tax than individuals paid or their charters required, the State agreed not to impose upon them any local burden; and the important inquiry in these cases is, Was such a contract entered into between the banks and the State based on a consideration binding the State on the one side and the banks on the other?

The statute under which this contract is claimed to have been made is found in the General Statutes under the title of "Revenue and taxation," sections 1 and 4 of article 2, and known as the "Hewitt bill." Counsel for the banks in the discussion of these cases classified the banks as follows:

1st. The banks chartered prior to the act of 1856, when the power to amend or repeal was not a part of the charter or reserved by any general law.

2nd. Banks chartered after that date, when by general law the right to amend or repeal the charters was expressly reserved.

3rd. National banks.

We shall treat all the cases as one in considering the application of the Hewitt act to the banks accepting its provisions.

Prior to the adoption of the present constitution it seems to have been the settled policy of the State to exempt banking institutions from local taxation and requiring them to pay a larger tax to the State upon their property than that paid by the individual taxpayer, and this additional tax went into the State treasury instead of being applied to municipalities in the discharge of local burdens. The framers of the constitution, not approving of this policy, established a fixed rule of taxation and made all taxation alike upon

property, whether for State or municipal purposes, applying
33 the rule for municipal purposes to the territory in which the tax is imposed. It is argued, and no doubt true, that a discrimination must exist between banks located where heavy local burdens are imposed and like institutions in more favored localities where lighter or no local burden exists; and while the fact that the banks in the commercial centers of the State are taxed $2.25 on the hundred, under the present system (local and State), and those in an adjoining town or county only one per cent. may work a hardship and prevent competition or drive the bank thus heavily taxed to locate elsewhere, yet this, under the old system, was a question of policy only, and the framers of the present constitution, in adopting the ad valorem system, left no room for classifying property so as to make any discrimination in the subjects of taxation, and the suggestions of counsel can only be considered in determining the intent of the legislature in passing the Hewitt act and that of the banks in accepting it.

It may be well, however, to ascertain the condition of the banks (and particularly those chartered before the year 1856) with reference to taxation and the circumstances attending the legislation resulting in the passage of the Hewitt bill in order to ascertain whether or not it was the purpose of the State to surrender in part its power of taxation and that of the banks to relinquish any right they could have asserted against the State by reason of their charters. The banks in existence prior to the act of 1856 were claiming their charter contract, by which only a tax of fifty cents on each share of $100 of stock could be imposed. The national banks claimed they were entitled to be taxed like the State banks and were not liable for local burdens, and, besides, that their surplus, if in greenbacks or other non-taxable securities, could not be taxed under their charters from the Federal Government. The State claimed that the old banks were taxed for too small an amount, and the banks chartered since the year 1856 were resisting any discrimination between such institutions and the old banks.

Under these circumstances the legislature devised a mode of taxation that prevented a discrimination that would otherwise exist, and by the provisions of the Hewitt bill said to all the banks, State and national, We will impose a tax of seventy-five cents on
34 each share of your capital stock equal to $100, and in addition a tax on your surplus, and this shall be in full of all tax, State, county, and municipal, provided you will accept the act imposing the tax, with the conditions annexed. This act reads: "Shares of stock in State and national banks and other institutions of loan and discount, and in all corporations required by law to be taxed on their capital stock, shall be taxed seventy-five cents on each share thereof, equal to $100 of the stock therein, owned by individuals, corporations or societies, and such banks, institutions and corporations shall, in addition, pay on each $100 of so much of their surplus, undivided surplus, undivided profits or undivided accumulations, as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon real

estate, which shall be in full of all tax, State, county and municipal."

The 7th section of the act further providing that "nothing herein contained shall be construed as exempting from taxation for county or municipal purposes any real estate or building owned and used by said banks or corporations for conducting their business; but the same may be taxed for county and municipal purposes as other real estate is taxed."

Section 4 of this act provided: "That each of said banks, institutions and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular meeting thereof, may give its consent to the levying of said tax and agree to pay the same as herein provided, and to waive and release all right under the act of Congress, or under the charters of the State banks, to a different mode or smaller rate of taxation, which consent or agreement with the State of Kentucky shall be evidenced by writing, under the seal of such bank and delivered to the governor of this Commonwealth; and upon such agreement and consent being delivered and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever, so long as said tax shall be paid during the corporate existence of such bank."

Section 5 of the act provided:

35 "The said banks may take the proceeding authorized by section 4 of this act any time, until the meeting of the next General Assembly, provided they pay the tax provided for in section I from the passage of the act."

Section 6 provides:

"This act shall be subject to the provisions of section 8, chapter 68, General Statutes."

The banks involved in this litigation accepted in writing the provisions of the act and filed their written acceptances with the governor, under their corporate seal. The banks incorporated before the act of 1856 surrendered what they claimed to be their charter contracts, by which they were taxed only fifty cents on their shares of stock of $100. The national banks yielded their right to deduct from the value of their stock their surplus consisting of non-taxable securities and their claim to be taxed as the old banks; and, most of the State banks uniting to prevent any discrimination, all accepted the proposition made by the State and agreed to pay seventy-five cents on each share of stock of $100 in value and the additional tax mentioned in the article.

It is conceded (and we think it clear) by counsel for the city of Louisville that prior to the passage of the Hewitt bill, in the year 1886, the Bank of Kentucky had an irrevocable contract to be taxed at the rate of fifty cents on each share of $100, and the same may be said of all the banks chartered prior to the act of 1856; but it is further contended that the act, as well as the contract under it, were both subject to repeal by reason of the reserved power contained in section 6 of article 2. Again, it is contended by counsel for the city of Frankfort that the grant to the banks was without any

consideration, and the renewals of the charters of the old banks, as they are designated, placed them within the provisions of the act of 1856 and by the attorney general, that the State had no power to surrender this right of taxation, and the contract, if made, is not binding.

This court, in the case of The Franklin Count Court against The Bank of Kentucky, reported in 87th Kentucky, in an opinion
36 delivered by Chief Justice Bennett, held that the renewals of those charters did not affect the contract made with the State under the original grant, and, if disposed to reconsider the decision rendered in that case, it could not affect the issue involved on the present appeals. At the date of the passage of the Hewitt bill the Franklin circuit court had decided that the charter contract still existed, and after the acceptance by the banks of the provisions of the Hewitt bill this court affirmed that judgment. It is apparent that article 2 in the Hewitt bill was adopted by the legislature with the view of equalizing the burdens of taxation as between the banks and to relieve them from the burden of local taxation during their corporate existence; but it is insisted that there was no consideration for this partial exemption.

If there was a binding contract between the old banks and the State to pay a tax of only fifty cents on each share of stock and the banks surrendered their contract or their rights under it and agreed to pay seventy-five cents to the State instead of forty-two and a half cents, it seems to us this would be a consideration sufficient to uphold any such contract with the State if the power existed with the State to make it, and the fact that such a power existed has been too often decided by this court, as well as the Supreme Court, to require authority in support of it. It is plain, also, that these banks, including the national banks, surrendered their rights not only to settle the question as to local taxation, but to prevent competition or any discrimination between banks located in the commercial centers of the State and those outside of such localities, where no heavy burdens for local taxes were being levied, and therefore the consideration moving from the old banks was for the benefit of all the banks accepting the terms of the contract. The legislature was attempting to avoid all discriminations between these monied institutions, and therefore, its exactions from the old banks and the national banks being acceded to, it resulted to the benefit of the banks organized after as well as before the act of 1856 as to such banks uniting with the old banks in accepting the Hewitt bill. In this statute imposing the tax of seventy-
37 five cents and its acceptance on the conditions proposed there exists every element of a contract between the State and the banks and with such a consideration as will uphold it. No reasonable doubt can be entertained that such was the purpose of the parties to it.

It is contended that if a contract was entered into the provisions of the present constitution and subsequent legislation under it operated to repeal not only the statutes, but the contract made by virtue of its provisions, and this power existed by reason of the 6th

section of the article, making it subject to the provisions of section 8, chapter 68, General Statutes, declaring that—

"This shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be plainly expressed; Provided that whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

Assuming, and as we think was the legislative intent, the word "act" in section 2 of the Hewitt bill was used as synonomous with the "article," and therefore the reservation of power on the part of the legislature was the right to amend or repeal the article, in which is contained the proposition by the State to the banks in reference to taxation, it by no means follows that a contract made by virtue of its provisions can be abrogated at the will and pleasure of the legislature. The distinction between the power of the legislature to repeal an act and the right to annul by repeal or otherwise a contract made under it is manifest, and, while under our present constitution the State can make no contract by which the exercise of the taxing power can be lessened or any part of its sovereign power in that regard relinquished, under the former constitution property might not only be classified in imposing taxation, but the State could discriminate between the classes when providing the rate of taxation, and this doctrine has been recognized by numerous decisions of this court and sustained in like cases by numerous decisions of the Supreme Court.

The general rule in regard to legislation is that one legislative body cannot bind a subsequent legislature by its action in purely legislative matters, but when it comes to matters of contract,
38 if the State has the power to make it, its terms and conditions are as obligatory on the State as if entered into between two of its citizens, and an attempt to cancel such a contract without the consent of the party with whom it is made is in direct violation of that clause of the Federal Constitution providing that "no State shall * * * pass any law impairing the obligation of contracts." (Section 10 of article I, United States Constitution.)

That the State may enter into such contract was held by this court as early as the year 1839 in the case of Johnson *v.* Commonwealth, 7 Dana, 442, where there was an effort to tax the shares of stock in a bank in excess of the terms of the contract, and this court held that the contract placed a limitation on the power.

In the case of The Farmers' Bank *v.* Commonwealth, 6 Bush, —, it was held that the bank could not be taxed beyond its charter rate as fixed by the contract, and in the late case of The City of Frankfort *v.* Bank of Kentucky and others, 87 Ky., —, the same doctrine was announced.

The question then arises, Did the reservation of the power to amend or repeal this article of the Hewitt law empower the legislature or the framers of the constitution to disregard this contract between the banks and the State? We are satisfied, after a careful consideration of this question, that the parties making it never contemplated or intend- that the act of 1856 should apply to this con-

tract after its acceptance by the banks, and that such an acceptance was necessary to make the contract complete between the parties.

The legislature, at the time this contract was made, recognized the right of the Bank of Kentucky and the banks chartered prior to 1856 to stand upon their charter rights; or, if not, the right of the bank as against the State on this subject of taxation had found its way to the courts and had been decided adversely to the State.

The legislature thought the tax of fifty cents too small; the old banks could only be taxed as authorized by the Federal Congress; the new State banks were subject to such taxation as the
38½ State might see proper to place upon them, and to make their liable for these local burdens would be to end their existence or cause them to seek shelter under the Federal banking act; and with the view of placing the entire matter at rest and placing the banks on an equal footing the legislature said to all of the banks, "If you will agree to pay seventy-five cents on each share of stock equal to $100, etc., it shall be in full of all tax, State, county, and municipal."

It said to the old banks, "You must relinquish your right to a smaller rate of tax, and this must be done not by your president and directors, but by the consent of the stockholders, in writing, and delivered to the governor, as evidence of your good faith." The banks accepted the proposition made them in the manner pointed out by the act, and from that time to the adoption of the present constitution the contract was adhered to by both the State and the banks; it is now agreed that the banks, and particularly those with charter contracts for a smaller rate of taxation, surrendered those charter rights and agreed to pay a higher rate of tax under an act that authorized any subsequent legislature to repeal the contract at its will and pleasure. No rational view of this agreement should lead to the conclusion that business men at the head of these institutions would relinquish any right they had acquired under their charters that an increased burden might be placed upon the banks they represented. In the contention that the 6th section of the article reserves this power of repeal counsel overlook the fact that, by the express terms of the section by which this reserved power is retained, it is provided that "no amendment or repeal shall impair other rights previously vested."

The execution of the agreement between the State and the banks, based on a consideration such as appears from the act itself, connected with the acceptance of the banks, vested in the latter rights of which they could not be divested without their consent, the chief of which wa- the payment of a specified tax to the State during their corporate existence. The State waived its right to tax those banks for local purposes (except their realty), and required
39 in lieu thereof an additional tax to be paid into the State treasury. In this way the State, granting the franchise, derived the benefit instead of the municipal government, which, under the present system, the difference between forty-two and a half cents and seventy-five cents, with tax on surplus amounting to

$125,000, is taken from the revenue proper and applied to the municipalities where the banks are located.

In the case of The State against The Green & Barren River Navigation Co., 79 Ky., this court held, with the act of 1856, in full force, that the State had no power to annul a contract that had been executed between the State and the company, and the repeal of the charter to the extent that it deprived the company of its contract rights acquired under it was in violation of the constitution. In that case that court said: "We cannot assent to a doctrine that will allow the State to alter or abolish such contracts whenever in the opinion of the legislature the necessities of the public or the interest of the State require it."

The case of The Commonwealth against The Owensboro, &c., R. R. Co., 95 Ky., 60, determines in effect the question involved here. In the year 1884 the legislature passed an act to encourage the construction of railroad-, and in doing so relieved them from taxation for a limited period. The act provided "that all railroads which may hereafter be built within this Commonwealth, under existing charters or under charters which may hereafter be granted, shall be exempt from all taxation under the laws of this Commonwealth for the period of five years from the date of the beginning of the construction of the new roads."

The State claimed the right under the act of 1856 to repeal the law, claiming this had been done by legislation, as in the case before us, and attempted to coerce payment of taxes when the five years from the beginning of the construction of these roads had not expired. The court in response to the argument to exact the tax and the application of the act of 1856 to its provisions said: "It is sufficient to say of this proposition, which, even at first blush, strikes us as extraordinary and unjust if attempted to be applied to those of the appellees who accepted the offer of the State and expended their money on its exemption pledge, that the act of 1856, reserving the right to repeal or amend charter privileges, has no application to the law of 1884, which, as said before, was a general law and affected all alike who accepted its provisions or acted on the strength of them."

Counsel for the local governments argue the question involved as if there was a perpetual grant to these corporations, and therefore the power of repeal must, of necessity, have been reserved. The limitation of the grant extends to the life of the corporate charter, and with the banks existing prior to the act of 1856 their charters expire in ten or twelve years, and hence the policy of the State, if viewed in that light, was wise, because it was increasing the State revenue from fifty to seventy-five cents for a fixed and certain period.

The framers of the constitution, in adopting that instrument, were not looking to past legislation on this particular subject, but were creating an organic law for the future welfare of the State, leaving the rights of those protected by either the State or Federal Constitution undisturbed; and if the attempt to repeal vested rights had been made, the framers of the present constitution would have

been as powerless to accomplish such a purpose as the legislature in session after its adoption.

The Supreme Court decided a somewhat similar question on a writ of error to the court of appeals of New Jersey in the case of New Jersey *vs.* Yard, reported in 95th United States, 110. By an act of the legislature passed in March, 1865, the legislature of New Jersey enacted that the Morris & Essex Railroad Company should pay a tax of one-half of one per cent., to be paid by the company to the State whenever the net earnings of the company amounted to seven per cent. on the cost of the road, to be paid at the expiration of one year from the time when the road shall be open and in use to Phillipsburg and annually thereafter, "which tax shall be in lieu and satisfaction of all other taxation and imposition whatever by or under the authority of this State."

The 20th section of the original act of incorporation reserved to the legislature the right to alter, amend, or repeal the act whenever it should think proper. The act of 1865 was an amendment
41 to the original grant, and, in regulating the amount of taxation, contained this proviso: "Provided, that this section shall not go into effect or be binding on the company until the said company, by an instrument duly executed under its corporate seal and filed in the office of the secretary of state, shall have signified its assent thereto, which assent shall be signified within sixty days after the passage of this act, or this act shall be void."

Chief Justice Miller, in delivering the opinion in that case, said: "The main question here is, Did the legislature intend to make such a contract? That its meaning and its terms are clear enough, and taken alone, no one denies but that it is a contract which would be protected by the Constitution of the United States."

And in like manner will the contract in question be upheld; and as said by Mr. Justice Miller, in New Jersey *v.* Yard, "The legislature was not willing to rest this contract in the usual statutory form alone, depending on its validity as a contract upon some action of the corporation under it to bind it to its terms, but they required of the company a formal, written acceptance within sixty days, else it became wholly inoperative."

And it may be said t— in the New Jersey case there was no consideration other than is found in ordinary railroad charters. It is said, however, in that case, the repealing clause, or what is known ain this State as the act of 1856, was appended to the original charter, and when amended formed no part of the amendment, as is found in this case, and therefore the court concluded the amendment was no- subject to repeal. The question is asked, Why the necessity of making the act of 1856 apply to article 2 if the legislature did not intend to reserve the right of annulling the contract?

In response to this it might be asked, if such was the legislative intent, why the necessity of having a formal written acceptance from the b-nks surrendering all their respective charter rights, and in consideration therefor agreeing to tax them seventy-five cents on the $100 so long as their charter continued, if the power
42 was reserved of abrogating the contract at any moment? If such was the legislative purpose, there could have been no

necessity for any consideration moving from the banks or any formality attending the execution of the contract. The act of 1856 was enacted to avoid the effect of the decision of the Supreme Court in the Dartmouth College case, reported in 4th Wheaton, to enable the sovereign power to amend and repeal charter provisions that had theretofore been regarded as beyond the power of the legislature without such a reservation; but under this act of 1856 it has been held by this court, as well as every other court having the question before it, that property rights or contracts rights acquired by virtue of the charter in exercising the privileges conferred could not be interfered with by legislation, and in fact the act expressly provides "that, whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

The old banks had contracts rights sustained by the adjudication of the courts of the State that exempted them from local taxation, and the same adjudication was had in regard to national banks, although the cases as to the national banks were decided subsequent to the passage of the Hewitt bill. (City National Bank of Paducah *v.* City of Paducah, 10th Kentucky Law Reporter; Covington City National Bank *v.* City of Covington, 21st Federal Reporter.)

The legislature saw the obstacle in the way of increasing the taxation of these banks, and, the national banks standing on the same footing with the State banks, it became apparent that it was to the interest of the State to hold out inducements to all the banks that equality as between them might exist, and at the same time increase the taxation. The banks had not asked for any amendments to their charters, nor was the effort made by the legislature to repeal or amend the charters. The State was attempting to enact a general law entitled "Revenue and taxation," applying to all subjects of taxation and *yo* all kinds of property. The tax in regard to banks under this general title was fixed at seventy-five cents as to all banks and to all corporations required by law to be taxed
43 on their capital stock; and as to the old banks and the *old banks and the* national banks, the surrender of their rights was made to depend upon their acceptance of the proposition made to them by the State, by the terms of which they were to pay the tax imposed by the Hewitt bill and be released from other taxation so long as their charters continued. Why, then, did the legislature annex to article 2 of the revenue bill the provisions of the act of 1856?

No contract had been made when the bill passed, as there had been no acceptance by the banks, and not until the adjournment of the legislature was the contract consummated. It was providdd in article 2 that the acceptance had to be made before the legislature again assembled, and the act of 1856 could only have authorized the reservation of power to repeal or withdraw this proposition, if within the period fixed there was no acceptance by any of the banks of its provisions.

The right to the franchise or the exercise of the privileges granted was not involved in the legislation, but the banks, with their

charters in full force, were asked by the legislature to make an agreement as to a rate of taxation that could not have otherwise been enforced against either the old banks or the national banks.

The corporations had the right to contract by reason of their charters, and, dealing at arm's-length with the State, accepted the terms and conditions offered in good faith; and the question here is not the right of the State to repeal or amend their charters, but the right of the State to cancel this contract without the consent of the banks.

The right of the State to repeal the franchise or amend the charter is not here questioned, when subject to the act of 1856, but the repudiation of the contract will not be sanctioned.

There was in fact a necessity for the State to apply the act of 1856 to article 2. Other corporations, as well as banks organized since 1856, were liable to this tax, whether they accepted the provisions of the Hewitt bill or not, and section 4 was inserted for the express purpose of creating a contract between the old banks and the national banks on the one side and the State on the other, by which the taxation on these banks might be increased, and,
44 at the same time, placing all the banks accepting its terms on the same footing. If no acceptance had been made there was no reason why the act could not have been enforced as against these corporations coming within the act of 1856, but neither the banks nor the State ever intended to perform such an idle act as entering into this solemn agreement that might be disregarded by the State whenever its representatives saw proper.

The rule is, if a statute is susceptible of two constructions, that which is consistent with public policy will be followed, and no meaning given a statute that will lead to an absurdity. The case before us is much stronger for the banks than that of Yard *v.* New Jersey. Here the old banks had contract rights, sustained by the adjudication of the courts of the State, to the effect that they were not liable to local taxation, and the same adjudication followed in reference to national banks. The contract was not only executed, but based on a valuable consideration. If there was any doubt as to its meaning, that doubt would be construed for the State; but when considering the entire article, the intention of the legislature, it seems to us, is manifest.

This increased tax under the former constitution, as before stated, went to the State, and not to the municipalities. Such was the policy of the State when the contract was made, and we perceive no reason for abrogating its terms so as to withdraw from the State treasury this additional tax the banks have been paying, amounting to $125,000 annually, and transfer it to the cities to aid in discharging local burdens. It requires no judicial utterance to show that under the national banking act, where the rate of interest is fixed at six per cent., or as the State law provides, and a forfeiture of the entire interest if more is charged, that these banks, by the imposition of local burdens, cannot be taxed as much as two and a half per cent. in any locality when the average taxation of State banks will not exceed half that sum.

In the case of Lionberger *v.* Rouse, reported in 105 U. S., after the national banking act system went into effect, the legislature of Missouri passed a law authorizing the banks of issue in that State, ten in number, to enter into the new system. Eight of those banks
45 became national banks and two of them declined to do so. The two old banks, as the Supreme Court of the United States held in that case, had a contract right with the State not to be taxed exceeding one per cent., and the State was powerless to increase this tax. The assessment of the plaintiff's shares of stock in the national bank was at the rate of nearly two per cent. It was contended that this was an unjust discrimination in favor of the two State banks, and the Supreme Court said as this national bank, or its shares, was not taxed for a greater sum than other monied institutions of the State, and the State was powerless to change its contract with the two remaining banks of issue, it was not such a discrimination as would authorize the court to interfere. While there are exceeding sixty State banks, the Bank of Kentucky and its branches, the Northern bank and its branches, the Bank of Louisville, and the Farmers' Bank of Kentucky and its branches were at the time of the passage of the Hewitt bill and are now regarded as the prominent banking institutions of the State, and if, with their capital and business rank, placed before the Supreme Court with a tax of only one per cent. and the tax on the national banks placed at two per cent. the judgment of the Supreme Court upon such a state of fact-doubtless would have been similar to the decision of this court in the case of The National Bank *v.* City of Paducah.

The case of Lionberger *v.* Rouse has no bearing on this question of contract. Here the State was not powerless to remedy the evil or prevent the discrimination complained of in the Missouri case. The legislature devised a mode by which this discrimination could be removed, however great or even insignificant the difference in taxation might have been. The national banks, recognizing they could be taxed as other monied capital, and desiring uniformity of taxation and not one rate for one bank and a different rate for another, surrendered their right or claim to be taxed as the old banks were taxed and entered into this agreement, by which a uniform system of taxation was adopted for all banks, such as the State desired. The claim of the old banks and the national banks as to the mode of taxing them was certainly not without foundation for the reason already given, and the proposition by the legislature to settle
46 these differences and its acceptance was a wise and just solution of the whole question.

The case presented by this legislative repeal is the opposite of the legislation in the Missouri bank cases. In the one case there was no legislation making the discrimination, while in the case before us the State, after placing the banks, State and national, on the same footing as to taxation by the consent and agreement of all the parties to the contract, is now insisting upon a legislative re-cission of the contract and placing the old banks at least in a position where they are to pay only fifty cents on shares of $100 and leaving the national banks subject to a greater rate of taxation. This re-

peal, if sustained, is in effect the creation of three or more new banks, with a rate of taxation much less than that imposed on the national banks and making a discrimination in favor of the old banks and their branches that gives them a monoply of the banking business of the State.

The old banks, with a capital of five millions at the time the Hewitt bill passed, will be relegated to the condition they were in when the contract was made, as was held by the Supreme Court in the case of Clark *v.* Water Co., 143 U. S., and that is an exemption from local burdens with a tax of one-half of one per cent. to the State.

The national banks, with a capital of ten millions when the Hewitt law was enacted and now increased to twenty millions, will also be exempt from local burdens, because the State, in the exercise of a power it now claims, has abandoned the contract under which taxation was equal and uniform and voluntarily made an unjust discrimination when in its power to prevent it. Such consequences would be disastrous to both the State and the municipalities, the State losing the increased tax and the municipalities or the legislature for them, without power to impose on national banks local burdens. The banks have all practically accepted the provisions of the Hewitt bill, and the legislation repealing or cancelling the contract being in violation of both the State and Federal Constitution leaves the Hewitt bill, as to the banks, in full force and they must be taxed under its provisions until the contract terminates.

These monied institutions are now paying, including tax
47 on surplus and realty, eighty cents, or about that sum, on each share of stock of $100, while the citizen tax-payer is paying only forty-two and one-half cents, and at last it is a question whether this difference in the taxation is to be paid by the banks into the State treasury, as under the old constitution, or to the municipalities under the new constitution.

In the absence of this contract it would go to discharge local burdens, but with this contract in full force it must be paid, as to the amount and manner as provided by the Hewitt bill of 1886, into the treasury of the State.

It results, therefore, that the judgments in the case of The Louisville Banking Co. *v.* City of Louisville, Third National Bank *v.* City of Louisville, Northern Bank of Kentucky *v.* Bourbon County, Deposit Bank of Frankfort *v.* Franklin County, Bank of Kentucky *v.* Armstrong, sheriff; Bank of Kentucky *v.* City of Frankfort, Farmers' Bank of Kentucky *v.* City of Frankfort, Same *v.* Franklin County, Same *v.* City of Henderson, are reversed, and the judgments in the cases of The City of Louisville *v.* The Bank of Kentucky, Commonwealth *v.* State National Bank, Same *v.* Frankfort National Bank, Same *v.* Deposit Bank, Same *v.* Bank of Kentucky, City of Covington *v.* German National Bank, Same *v.* First National Bank, and Commonwealth *v.* Farmers' Bank of Kentucky, are each and all affirmed.

Judges Lewis, Paynter, and Guffy dissenting.

At the same time the following dissenting opinion was delivered:

Were this a case simply affecting the rights of two citizens of the State I might content myself with dissenting without expressing my reason therefor, but involving as it does the sovereignty of the people and denying to them, as I conceive it does, their right to have their will to assume the form of law on such a vital question as that of taxation, I feel constrained to give my reasons for dissenting from the views expressed by the court.

The effect of the opinion of the court is to destroy a principle engrafted in the laws of — State nearly forty years ago—one
48 so important that it was declared by the General Assembly to be in effect written in every act of incorporation granted by it. So important was the reservation of the right to amend or repeal such act of incorporation that the General Assembly was unwilling to run the risk of inserting it in each act, but declared by general law that it should be understood to be written in all of them.

The opinion in effect denies the power of the people through their organic law to declare what are just principles of taxation, that the same rate of taxation shall be imposed on the property of corporation as on an individual, and the authority of the General Assembly to execute that constitutional mandate.

I believe that corporate rights should be held as inviolate as those of the citizen; that each citizen should bear his full share of the common burden of taxation; "that all freemen when they form a social compact are equal and no man or set of men are entitled to exclusive, separate public emoluments or privileges from the community, but on consideration of public services." I do not believe in the State passing laws impairing the obligation of its contracts with corporations or individuals when the contracts are made by virtue of the provisions of the constitution, *b*or do I believe in denying the right to the State to withdraw from a contract when in express terms the right to do so is reserved, as in such case it cannot be said to impair the obligation of the contract.

While I regard there is a vast difference between granting a corporate franchise authorizing the acquisition of property by donation or otherwise for the purpose of educating and spreading the gospel among the Indians and affording an opportunity to the youth of the land in the days of the early settlement of the country to obtain an education, as was the purpose of the charter to Dartmouth College, and granting immunity from taxation to institution- operated solely for private gain; yet *as* the courts of the country, taking the principle enunciated in the Dartmouth College case as authority therefor, have held that immunity from taxation granted in the act of incorporation is a contract with the State and is irrevocable
49 unless the right to do so is reserved in the act of incorporation or in a general act, which must be treated as part of the act of incorporation.

In considering these cases I shall accept that as a rule to govern in the determination of the questions involved. Indeed it is unnecessary to take any other view of the law in order to reach the conclusion which I have done in these cases.

However, I cannot forbear quoting what Justice Miller said in delivering the opinion of the court in New Jersey *v.* Yard, 95 U.S., 114, to wit: "The writer of this opinion has always believed, and believes now, that one legislature of a State has no power to bargain away the right of any succeeding legislature to levy taxes in as full a manner as the constitution will permit. But so long as the majority of this court adhere to the contrary doctrine, he must, when the question arises, join with the other judges in considering whether such a contract has been made."

I agree with Justice Miller that in the matter of taxation that one legislature of a State has no power to bargain away the right of a succeeding legislature to levy taxes in as full a manner as the constitution will permit.

Such a power could be exercised to such an extent as to almost destroy the Government or to grievously burden one class of its citizens.

Instead of having the Dartmouth College case under consideration, had Chief Justice Marshall a case coming from Kentucky wherein it was claimed the legislature had sought to impair the obligation of a contract it had made with one of the old banks by passing a statute providing it should pay an amount of tax in addition to that specified in its charter, I cannot believe, in view of the constitutional provision prohibiting the granting of exclusive privileges from the community, except "in consideration of public services," he would have held the bank had an irrevocable contract with the State.

From the Dartmouth College case to the present time (and the right was in that case recognized) the Supreme Court of the
50 United States has uniformly held that whenever the legislature granting the charter reserved the right to amend or repeal it, either by so providing in the charter or by a general law, the right to amend or repeal such charter exists, and to do so is not to impair the obligation of a contract.

The charter being accepted with the full understanding that the right of repeal is part of the contract, and to the exercise of which right the grantee has consented.

Many of the States, after the Dartmouth College case, began to realize the importance of reserving the right to control corporate organizations which from time to time were being created, and, to make sure such power was being reserved, they passed general laws expressly reserving such powers, which statutes became a part of every act of incorporation as fully as if written therein unless a different purpose was therein plainly expressed.

The legislature of this State, being fully aware of the importance of such action as would reserve the right to amend or repeal acts of incorporation, passed what is known as the statute of 1856, which is section 8, chapter 68, General Statutes.

It reads as follows: "All charters and grants of or to corporations or amendments thereof enacted or granted since the 14th of February 1856 and all other statutes, shall be subject to amendment or repeal at the will of the legislature unless a contrary intent be therein plainly expressed; Provided that whilst privileges and franchises

so granted may be changed or repealed, no amen-ment or repeal shall impair other rights previously vested."

It seems so plain that charters and grants since the 14th February, 1856, are subject to amendment or repeal at the will of the legislature, unless a contrary intent is plainly expressed therein, that it is needless to discuss it.

The Supreme Court of the United States has not only so held, but this court has done likewise in every case that has been before it.

Acts of the charfacter of the act of 1856 have uniformly been held to be a condition upon which every charter of a corporation subsequently granted was held, and upon which every amend-
51 ment or modification was made, and that they were as much a part of the charters as if incorporated into them.

Any other interpretation would render the statute inoperative and wholly deprive it of its power to accomplish the purpose of its enactment. In 1841 South Carolina passed a statute substantially the same as the statute of 1856. The Southeastern Railroad Company was incorporated in 1851. In 1855 an act was passed to amend its charter, the amendment exempting the railroad company from taxation. In 1868 the State adopted a new constitution, in which it was declared that the property of the corporations then existing or thereafter created should be taxed.

The legislature of the State passed an act to enforce that provision of the constitution.

The question *was* involved in Tomlinson *vs.* Jessup, 15 Wallace, 454, was as to the enforcement of such legislation.

Justice Field, in delivering the opinion of the court in the case, said: "It is true that the charter of the company when accepted by the corporators constituted a contract between them and the State, and that the amendment, when accepted, formed a part of the contract from that date and was of the same obligatory character; and it may be equally true, as stated by counsel, that the exemption from taxation added greatly to the value of the stock of the company and induced the plaintiff to purchase the shares held by him; but these considerations cannot be allowed any weight in determining the validity of the subsequent taxation. The power reserved to the State by the law of 1841 authorized any change in the contract as it originally existed or as subsequently modified or its entire revocation. The original corporators or subsequent stockholders took their interests with knowledge of the existence of this power and of the probability of its exercise at any time, in the discretion of the legislature. The object of the reservation and of similar reservations in other charters is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise if the public interest should at
52 any time require such interference. It is a provision intended to preserve to the State control over its contracts with corporators, which without that provision would be irrepealable and protected from any measures affecting its obligation. There is no subject over which it is of greater moment for the State to preserve its power than that of taxation. Immunity from taxation,

constituting in these cases a part of the contract with the Government, is, by the reservation of power, such as is contained in the law of 1841, subject to be revoked equally with any other provision of the charter whenever the legislature may deem it expedient for the public interests that the revocation shall be made.

The reservation affects the entire relation between the State and the corporation and the places under legislative control — all rights, privileges, and immunities derived by its charter directly from the State."

The same doctrine is enunciated in—

Railroad *v.* Maine, 96 U. S., 499.
Railroad Co. *vs.* Georgia, 98 U. S., 359.
Hoge *vs.* Railroad Company, 99 U. S., 348.
Greenwood *vs.* Freight Company, 105 U. S., 13–21.
Spring Valley Water Works Co. *vs.* Schottler, 110 U. S., 347–352.
Clore *vs.* Greenwood Cemetery Company, 107 U. S., 466–476.
Louisville Gas Company *vs.* Citizens' Gas Company, 115 U. S., 683–696.
Gibbs *vs.* Consolidated Gas Company, 130 U. S., 369–408.
Sioux City Street Railway *vs.* Sioux City, 138 U. S., 98–108.

It must be conceded from the authorities cited the Supreme Court of the United States has repeatedly held that the legislatures of the States have the power when reserved in the charter or by general law to change or repeal acts granting corporate privileges or franchises.

The decisions of this court are in accord with these opinions.

The case of Griffen *vs.* Kentucky Insurance Company, 3 Bush, 592, has been quoted with approval in the case of Louisville Water Company *vs.* Clark, 143 U. S., 14, and in that case the court held that in all cases of charters or grants of corporate franchises where the intention of the legislature was not "plainly expressed" not to exercise the power reserved by the statute of 1856 to amend
53 or repeal at the will of the legislature such charters or grants must be read as if all the provisions of the act of 1856 were incorporated in them.

Judge Robertson, in delivering the opinion in Griffin *vs.* Kentucky Insurance Co., 3 Bush, 595, said: "There was the general reservation of power, like a special reservation in the charter itself, a part of the contract, or was the contract made subject to it and the obligation defined or modified by it? We think so; and whatever might be thought of the policy of such legislation or of the policy or justice of the repealing statute over which the judiciary has no jurisdiction, our conclusion as to the mere power of repeal is, as we think, sustained by reason and abundant authority. All contracts, except such as are municipal, are made subject to law, and their obligation is defined by the *lex loci contractus.*

Why should the contract in this case be excepted? Such exception would be unreasonable, and the authorities fortify the reason."

In the case of Cumberland and Ohio Railroad Company *vs.* Bar-

ren County Court, 10 Bush, 604, in reference to the act of 1856 the court said: "The act was intended to preserve to the State controover all acts of incorporation thereafter passed. Experience had demonstrated the propriety of, if not the absolute necessity for, such a reservation of power, and it would be a manifest disregard of the clearly expressed will of the legislature for the courts to resort to technical rules of construction or finely drawn legal implications to escape the effect of the plain declaration that all charters of and grants to corporations shall be subject to amendment and repeal 'unless a contrary intent be plainly expressed.'"

I conclude that the legislature in 1886, when it passed the revenue bill, had the right to amend or repeal at will all charters and grants of or to corporations or amendments thereof enacted or granted since the 14th of February, 1856, "unless a contrary intent was plainly expressed."

In view of decisions of the courts, I also conclude that as to the charters of banks granted prior to the 14th of February, 1856,
54 unless the acts extending them reserved the right to amend or repeal their charters, any act of the legislature increasing their tax would be invalid as to such banks unless in the acts extending them the right to amend or repeal was reserved.

The national banks were subject to have the same tax imposed on their shares of stock as are imposed on State banks doing business under charter granted since the 14th of February, 1856. Their real estate is subject to taxation. Their shares of stock may be taxed at their actual value, but no greater rate of taxation shall be collected on them than is assessed upon the moneyed capital in the hands of individual citizens of the State.

In the case of The Covington City National Bank *vs.* City of Covington, &c., 21 Federal Reporter, 491, Justice Matthews, discussing this subject, said: "When, therefore, a statute taxes the shares of a stockholder at their actual or market or full value, that necessarily includes such value beyond its par or nominal value as is imparted to the stock by the fact that the bank has a surplus fund or undivided profits. The interest which Congress has left subject to taxation by the States under the limitations prescribed, and which is a distinct independent interest in property held by the shareholder, like any other property that may belong to him, is that interest as defined in Van Allen *vs.* The Assessors, 3 Wall., 573, which 'entitles him to participate in the net profits earned by the bank in the employment of its capital during the existence of its charter in proportion to the number of its shares, and upon its dissolution or termination to his proportion of the property that may remain of the corporation after the payment of its debts,' and (page 587) it includes for taxation the whole interest of the shareholder, such as would pass to the purchaser of the share on a transfer of his certificate. So, when a State law taxes shares of national bank stock, it taxes the same interest of the shareholder that he would transfer on a sale. The State may tax them at their actual or at their market value or at any other rate of appraisement which does not violate the act of Congress."

55 To the same effect are the cases of People *vs.* Commissioners of Taxes, 94 U. S., 415.

Mercantile Bank *vs.* New York, 121 U. S., 138.

In the latter case the court said (p. 155): "The main purpose, therefore, of Congress in fixing limits to State taxation on investments in the shares of national banks was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition by favoring institutions and individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy."

The legislature of Pennsylvania passed a statute taxing the shares in national banks on an assessed value thereof for county, school, municipal, and local purposes.

The Supreme Court in Hepburne *vs.* The School Directors, 23 Wallace, 480, held the statute valid.

It has been decided that it is competent for the States to tax the share- of national bank stock, notwithstanding the capital of the bank was invested in bonds of the United States, which were not subject to taxation.

It is no discrimination against them because they are required to pay a greater tax on their shares of stock than is paid by banks enjoying special privileges under their charters. Lionberger *vs.* Rouse, 9 Wallace, 468.

The court should endeavor to ascertain the legislative intent in the act of 1886 with reference to the taxation of banks, as all depends in this controversy upon what was that intent.

To aid in reaching a conclusion as to what the intent was, it is well to recall some official facts within the knowledge of the members of the legislature.

The first of July, 1885, was the date of the last report of the capital stocks of the banks in the State before the enactment of the revenue law of 1886. From that it is learned that the capital stock of the 59 national banks amounted to $9,708,900.00.

56 The capital stock of the 65 State banks doing business under charters granted subsequent to 1856 amounted to $6,224,891.00.

The capital stock of the four State banks—Farmers' Bank of Kentucky, Bank of Kentucky, Northern bank, and the Bank of Louisville—incorporated prior to 1856 was $5,144,500.00.

It will be seen from this statement that the capital stock of the national banks and of the State banks chartered since 1856 amounted in round numbers to $16,000,000.00, while the capital stock of banks whose charters antedate 1856 amounted to about $5,000,000.00, being less than one-third of the other banks named.

It must be presumed that the legislature knew that the banks claiming irrevocable contracts to pay only 50 cents on each share of their capital stock equal to one hundred dollars paid less than one-third of the revenue coming from the banks under the then existing law.

It can hardly be said that the Farmers' Bank of Kentucky was

in a condition to claim an irrevocable contract, because the act extending its charter, which became a law on March 10th, 1876, expressly reserved the right to amend or repeal its charter and amendments thereto.

It reads as follows: "That the charter of the Farmers' Bank of Kentucky as amended be extended for a period of twenty-five years from the termination of its charter as therein fixed: Provided, that said charter and amendments shall be subject to amendment or repeal by the General Assembly either by general or special act, and provided further that whilst the privileges and franchises so granted may be changed or repealed, no amen-ment or repeal shall impair other rights previously vested."

To simply quote the act extending the charter is a sufficient denial of and answer to the claim of an irrevocable contract.

This left but three banks in the State which could claim
57 an irrevocable contract and one hundred and twenty-five without any claim whatever to immunity against increased taxation.

The revenue act repealed several acts by particularly naming them and excluding certain other acts from the repealing clause and declared all other acts, general and special, and parts of acts inconsistent or not in conformity therewith were thereby repealed. The revenue law is now chapter 92 of General Statutes The only part of the act relating to the taxation of banks and other institutions of loans or discount is article 2, chapter 92, General Statutes. Sec. 1 of the article relates to the amount of tax which the banks shall pay and designating the method of levying the tax. Sec. 2 imposes certain duties on the cashier of the bank with reference to making a report to the auditor of public accounts. Section 3 exempts banks having a certain money invested in bonds or funds of the United States from taxation named in the section. Section 4, 5, and 6 of article 2 are as follows:

"SECTION 4. That each of said banks, institutions and corporations, by its proper corporate authority with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax: and agree to pay the same as herein provided, and waive and release all right under the acts of Congress or under the charters of the State banks to a different mode or a smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such bank and delivered to the governor of this Commonwealth; and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatever so long as said tax shall be paid during the corporate existence of such bank.

SECTION 5. The said banks may take the proceeding authorized by section 4 of this act at any time until the meeting of the next General Assembly; Provided, they pay the tax provided in section 1 from the passage of this act.

58 SECTION 6. This act shall be subject to the provisions of section eight (8) chapter sixty-eight (68) of the General Statutes."

Section 7 provides that if the banks fail or refuse to make the consent and agreement as provided in section 4, then they are to be assessed, and the same tax, State, county, and municipal, shall be imposed, levied, and collected, &c., as imposed on the assessed taxable property in the hands of individuals.

Without section four the remaining sections of the article would have been a complete system for levying and collecting taxes on the banks chartered after 1856. The article treats of nothing except the taxation of banks.

It seems there can be no further question of the power of the legislature at that time to impose a tax on *the* such banks for State, county, and municipal purposes.

It was wholly useless for the legislature to ask the consent of the banks chartered since 1856 to make any consent to the imposition of tax on them for that purpose.

The national banks were subject to the payment of taxes for State, county, and municipal purposes, and it was not necessary to obtain their consent that they might be taxed for that purpose. It was needless to ask this class of banks to enter into the agreement.

The legislature may have entertained some doubt not as to the right to tax banks for State, county, and municipal purposes, but as to the method prescribed, and desired to remove all doubt by obtaining the consent of such banks to that method. It was greatly to the interest of the national banks and the State banks chartered subsequent to 1856 to enter into the agreement, because they were thus released from the payment of county and municipal taxes. In agreeing to pay the amount provided in the article for State purposes they were released from local burdens, which in some instances were two or three times as great as that which they agreed to pay the State. It was greatly to their interest to accept the proposition of the State. As a matter of fact, these banks were relinquishing no rights. They were apparently yielding a right
59 which the State in its sovereignty already possessed. The right had never been relinquished, but had been expressly reserved. So vigilent had been the State to not only retain the control of corporations and retain its power to tax them, its purpose to do so was declared in the form of a legislative enactment which was understood to be written in every act of incorporation. It may be a more difficult task to show why the three old banks entered into the agreement. Their right to the immunity from increased taxation was questioned, as shown by the revenue act, as their charters were declared repealed so far as they were inconsistent therewith. It was the evident purpose of the legislature to induce these banks to recede from their claim to an irrevocable contract. It was desired that all banks should be placed upon the same footing in the matter of taxation with the other banks of the State.

The legislature had been renewing their charters, and if they were again renewed an appeal must be made to the same power.

These banks may have realized that the act of 1856 should have, by a proper interpretation, been made applicable to the acts renewing their charters. However, it is needless to speculate further as to the reason which induced them to enter into the contract with the State by which they released an irrevocable contract which they had under their charter against increased taxation. These banks had the right to give their consent to the increased taxation. The courts had always recognized the right of a corporation to consent to legislation or accept its provisions and be bound thereby, though it may have the effect of depriving such corporation of a vested right. This brings me to the question as to what were the terms and conditions of the contract into which all these banks entered. The banks must be presumed to know the law and the effect of the contract to which they agreed. Those who represent banks are among the brightest and most sagacious business men of the country. The contract is brief, simple, and without ambiguity.

60 In short, the State agreed to accept and the banks agreed to pay seventy-five cents annually on each share of their stock equal to one hundred dollars, and in consideration thereof be exempt from all other taxation whatsoever so long as this tax shall be paid during the corporate existence of such bank. If these were all the terms of the contract, then it might be contended with some reason that it was irrevocable during their corporate existence. Being mindful of the policy which had been pursued for thirty years, it said in effect to the banks, It is desired that the contract be signed in the formal way prescribed, but it must be understood that the right to alter, change, or abandon the contract is reserved to the State. That its purpose might be fully understood, the legislature placed in the article section 6, which in terms makes the statute of 1856 a part of the contract.

It is expressly provided that the article shall be subject to the provisions of section 8, chapter 68, General Statutes. The legislature was determined that the provisions of the act of 1856 should not depend on riles of construction to be read into the contract by implication, but in terms said that it should be part thereof. It is admitted that when the word "act" appears in article 2 it has reference to the article (2). Article 2 was an independent measure offered as a substitute to article 2 of the original bill.

The substitute was adopted and became a part of the revenue bill. It now appears as part of the bill in the exact language as offered. This section 6 has no reference to any part of the revenue bill except the article of which it is a part. It has been suggested that it had reference to new banks that might be organized. This could not be so, because article 2 is dealing with banks in existence and asks them to give their consent, &c., thereto, and says, if at all, they must do so before meeting of the next General Assembly. When it was admitted that the word "act" as used is synonymous with "article," then it must be admitted that the provisions of section 6 of article 2 are applicable alone to the article (2) of which it is a part.

If there could be any doubt from the language used as to the

meaning of the legislature, then that must be removed by
61 an examination of the house and senate journals.

An amendment (page 1241, House Journal 1886) was offered to article 2 of the original revenue bill, and section 7 of that amendment reads as follows: "This act shall not be subject to the provisions of section 8, chapter 68, of the General Statutes." The amendment (page 1243, House Journal 1886) was defeated. While the revenue bill was pending in the senate it was proposed to amend section 6 of article 2 by inserting after the word "shal-" in the first line the words "not for ten years" (page 1315, Senate Journal 1886). This amendment was defeated. Had it been adopted, then the section would have read: "This act shall not for ten years be subject to the provision of section eight (8), chapter sixty-eight (68), of the General Statutes." The proceedings of the house and senate show the legislature fully understood the purpose for which this section was made part of article 2. It was the purpose of the legislature not to be restricted for any period of time in its right to repeal the article and withdraw from the contract.

In view of the plain provision of the statute, about the meaning of which there should be no doubt, and the intent of the legislature being fully explained by its record, it seems to me there should be no hesitation in concluding the act of 1856 should be read as part of the original contract; hence they are not irrevocable contracts. The fact that a written consent was asked and secured does not alter the application of the act of 1856. To this effect is New Jersey *vs.* Yard, 95 U. S., 104. The facts of that case were as follows: The Morris & Essex Railroad Company was created a corporation by an act of the legislature of New Jersey passed January 29th, 1835. The act provided that as soon as the net proceeds of the railroad amounted to seven per cent. on its cost it should pay a State tax of one-half of one per cent. on the cost of the road and no other tax should be levied upon it.

The twentieth section reserved to the legislature the right to amend or repeal the act whenever it should think proper. A supplemental act was passed on March the 2nd, 1836, in which the right to repe-l or amend was reserved. On the 14th of Feb-
62 ruary, 1846, the legislature of New Jersey passed an act in effect the same as the Kentucky act of 1856.

Another supplemental act to the charter of the railroad was approved March 23rd, 1856, authorizing a branch road to be built, and by which the company was vested with all the powers and franchises given by original and supplemental acts, &c. The third section of the last-named act read as follows:

"Be it enacted That the tax of one-half of one per cent. provided by this said original act of incorporation to be paid by the said company to the State whenever the net earnings of the said company amount to seven per cent. upon the cost of the road, shall be paid at the expiration of one year from the time when the road of the said company shall be open and in use to Phillipsburg and annually thereafter, which tax shall be in lieu and satisfaction of all other taxation of imposition whatever, by or under the authority

of this State or any law thereof; Provided that this section shall not go into effect or be binding upon the said company until the said company by an instrument duly executed under its corporate seal and filed in the office of the secretary of state shall have signified its assent thereto, and which assent shall be signified within sixty days after the passage of the act or this act is void." The instrument required by the section was duly executed by the company. In the act of 1865 there was no reservation of the right to repeal or amend it. Acts of the legislature imposed a more burdensome tax on the railroad company than that provided for in section three, *supra*. The sole question in New Jersey against Yard was whether the act of 1865 and its acceptance by the railroad company constituted a contract which could not be impaired by any subsequent legislature of the State. The court held that it was an irrevocable contract because the legislature had not reserved the right to amend or change it. It is plain, from the opinion, that had the legislature reserved the right to alter or change the contract or act by which it was made the court would have held the act of the legislature doing so did not impair the obligation of the contract. Justice Miller, in delivering the opinion, said: "But, as we have already said, since the legislature which passed
63 the act of 1865 had the power to make a contract which should not be subject to repeal or modification by one of the parties to it without the consent of the o-her, the main question here is, Did they intend to make such a contract?" * * * "In the case now under consideration it is conceded on all hands that the act of 1865 was a contract for a tax on one-half of one per cent. per annum on the cost of the Morris & Essex railroad and no more, but counsel for defendant says the contract was repealable; that the legislature, of its own volition, could impose other and more burdensome taxes at its discretion; that it was a contract so long as the legislature of New Jersey was satisfied with it and no longer. It is conceded also that the construction of it cannot be sustained, unless we are bound to import into it either the reservation clause of the act of 1836 or what is called the interpretation act of 1846. We have already shown how little reason there is for doing this on general principles of construction. We think it still clearer that it cannot be done, because it is inconsistent with the legislative intent in passing the act of 1865." * * * "The implication is of a right to revoke it, and comes from the other quarter, and is one which we do not think exists by fair construction and which we do not feel at liberty to import into the contract to defeat its manifest purpose." From the language of this opinion and the long line of decisions of the same court, it is manifest that the decision was made to turn on the question of the reservation of the right to amend or repeal, &c. In order to hold that the right to alter, &c., the contract made under article 2 does not exist, it is absolutely necessary to eliminate section 6 from the article. No such rule for the interpretation of statutes can be found, as the meaning of the section is manifest and clear; besides, by the very terms of the act of 1856, a rule of interpretation is given that "all charters and grants" of or to corporations or amendments

thereof and all "other statutes" shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein "plainly expressed." It is proposed now by those representing the banks to disregard this statutory rule of construc-
64 tion. It is now in effect insisted that in order to reserve the right claimed it must be "plainly expressed" in the act that it is reserved; this being done, it is still disregarded. The legislature, doubtless anticipating such contention and versatility, "plainly expressed" in the article that whatever was done thereunder or in pursuance thereof could only continue during its will. If section 6 was not for this purpose, I would like to have had the court to suggest some reason as to why it was placed in the article. The doctrine is that when it is asserted that a State has bargained away her right of taxation in a given case, the contract must be clear and cannot be made out by dubious implication. New Jersey *vs.* Yard, *supra.*

The taxing power of the State is never presumed to be relinquished unless the intention to relinquish is expressed in clear and ambiguous terms. Bradley against McAtee, 7 Bush, 667. It is a familiar rule of construction of statutes that effect must be given to every provision except in cases of absolute and irreconcilable incongruity. Dazey against Kellan, 2 Duval, 407.

If one statute refers to another for the power given by the former the statute referred to is to be considered incorporated in the one making the reference. Nunes *vs.* Wellisch, 12 Bush, 365. Mr. Cooley, in his work on Taxation (page 204), says: "As taxation is the rule and exemption the exception, the intention to make an exception ought to be expressed in clear and unambiguous terms; and it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain."

For the interpretation of statutes this court in Nicholas *vs.* Wells, Sneed, 259, said: "That the most natural and genuine way of construing a statute is to construe one part by another part of the same statute; that the words and meaning of one part of a statute do frequently lead to the sense of another, and if it can be prevented no clause of sentence or word shall be superfluous, void, or insignificant."

As there is a clear expression of the legislative intent in the statute, no rules are really necessary to aid in its interpretation.
65 If A should rent B his farm for a term of 99 years, consideration of a certain annual rental, but it was written in the contract that it was "subject" to be annul-ed at the will of A, in the interpretation of this contract, would not a court hold that the entire instrument was to be considered in determining the effect? Would not A's right to annul the contract be just as enforcible as B's right was to enter upon the farm under the contract? Whilst it might be said it was an unwise contract upon the part of B, yet, being capable of contracting, he would be bound thereby, and a court would certainly not hold, because it appeared to be an unwise contract for B to have entered into, that therefore A did not reserve the right to annul the contract. This is the character of interpretation

that must be employed to sustain the contention of counsel for the old banks. It can hardly be said it was an unwise contract on the part of one hundred and twenty-five of the one hundred and twenty-eight banks in the State, as by the very terms of the act under which the contract was entered into they were required to pay State, county, and municipal taxes, with the power in the legislature to increase it at will.

It certainly was a very advantageous contract for them to enter into when these banks paid more than two-thirds of the taxes paid by all the banks, with the power in the legislature to increase the amount if they should so desire. What reason can be suggested as to why the legislature would desire to reverse the policy which had been ste-dfastly adhered to for so long and enter into an irrevocable contract with such banks? Why should it want to surrender a power which it had been so jealous to preserve?

The contract was made subject to the right of the legislature to withdraw from it whenever it regarded the public interest demanded it should do so.

Whenever the banks accepted the provisions of the act of 1886 they surrendere- any rights to immunity from increased taxation which their charters gave them.

The acceptance of the act of 1886 was a consent to the re-
66 peal of so much of their charters as were inconsistent therewith; hence they stood in such a relation to the State as to future taxation as the legislature saw proper to impose. If the provisions of their charters relating to taxation were repealed, as it must be admitted they were by the act of 1886, then such provisions were no longer in force. It is unreasonable to say that the provisions of the charter fixing the rate of taxation on the banks at fifty cents on each share of the capital stock of the banks equal to one hundred dollars can be in force if the act of 1886 fixing such tax at seventy-five cents instead of fifty on shares is in force. The court admits the latter is in force. In doing this it must be admitted the charter privileges has been repealed.

If repealed, then, by the act of 1886, surely the only way in which the provisions of their charters could be restored would be by the legislature so providing in same act. There is no pretense this has been done. The fact that the law of 1886 has been repealed does not restore the former provisions of their charters. Section 464, Kentucky Statutes, provides: "When a law which may have repealed another shall be repealed the previous law shall not be revived unless the law repealing it be passed during the same session of the General Assembly."

It is a most groundless contention to say that if the present law is sustained that the old banks will be restored to the former privileges under their charters.

It has been suggested that the provisions of their charters with reference to taxation were vested rights, and although they consented to the legislation of 1886 and became subject to the provisions of the act of 1856, still, as the charter privilege as to taxation was a vested right, therefore it was saved to them by the provision

which preserves "other rights previously vested." The purpose of the act of 1856 was to reserve in the legislature the power to destroy the privileges and franchises granted in the charters.

If it does not have this effect it would be entirely inoperative, and the effort to retain control of corporations would be abortive.

67 The claim that the privileges granted by article 2 can be repealed, but without the right to terminate the contract with the banks, is not founded in reason.

The only privilege which the banks enjoyed was to pay the seventy-five cents on each share of stock in lieu of all other taxes.

To say that the law granting the privilege can be repealed because the right to do so was reserved, as is admitted by the court, and still leave the banks in its enjoyment (as is the effect of the opinion of the court) is to employ logic that has never been in common use by this or any other court.

This logic gives the banks the substance and the State the shadow.

The preserved rights, then, are not privileges and franchises granted by the repeal charter, but "other rights" which had vested previous to the act amending or repealing the charter?

Other rights are such as the beneficiaries under the charter may have acquired in property, choses in action, real and personal property, or interests of every character which they could acquire in operating under the charter, and also such rights or interests as other persons may have previously acquired by contract, mortgage, judgment, or otherwise in the property belonging to the corporation.

My contention has been recognized as correct in all the decisions of this court in passing upon the act of 1856. The Supreme Court of the United States has so construed the act. It was said in Griffin *vs.* Kentucky Insurance Co., 3 Bush, 594, "The provision was intended to secure the right of beneficiaries and others vested under the charter before its amendment or repeal, and does not affect the mere power to repeal the franchise."

To the same effect is Cumberland & Ohio Railroad Co. *vs.* Barren County Court, 10 Bush, 609. Section 174 of the constitution recognized a just principle when it declared that all property, whether owned by persons or corporations, should be taxed in proportion to its value unless exempted thereby, and that all corporate

68 property should pay the same rate of taxation paid by individual property.

The legislature, in obedience to that provision of the constitution, enacted the law for levying and collecting tax from the banks of the State, the validity of which is in question in these cases.

For the reason already given I conclude that the obligations of no contracts were impaired by the action of the constitutional convention or the succeeding legislature. Some of the best lawyers in the State were members of the convention which framed our constitution, who gave an earnest consideration to the questions involved in these cases, and the conclusions which they reached were

crystal-ized into section 174 of the constitution. I believe that their conclusions are correct.

The opinion of the court denies the power is in the legislature to say what taxes the banks of the State shall pay for State purposes during the existence of their several charters. It denies the right of the legislature to compel them to bear any of the burdens of county and municipal government.

I cannot believe the legislature did or intended by article 2 of the act of 1886 to reverse its policy so earnestly pursued for a generation and surrender to sixty-odd banks of the State its right previously reserved to control them in the matter of taxation, and to give up its power to increase or diminish the taxes imposed on 125 banks, including the national banks.

Exigencies may arise requiring the levying and collecting of vast sums to meet the public demand, yet, however great the emergency may be or imperative the demand for money to meet such wants, the legislature is powerless to compel the banks to contribute more than they are now paying at any time during their corporate existence.

The counties and municipalities are annually compelled to raise large sums of money by taxation. The counties of the State are compelled to incur large expense to support the county governments to pay for bridges and public highways and support their unfortunate citizens. The municipalities must incur great expense in
69 making all necessary improvements for the comfort, safety, and health of their citizens, to supply water and lights, to give police protection to their citizens and to the banks, yet the court concludes that the legislature has no power to compel the banks to contribute their fair share of such expenses.

In this view I cannot concur.

COMMONWEALTH OF KENTUCKY:

I, Abram Addams, clerk of the Kentucky court of appeals, hereby certify that the foregoing 79 pages (being numbered 1 to 78, inclusive, with an interpolated number, viz., "page 1 continued") contain a true, full, and complete transcript of the record and proceedings had in said court in the case of Third National Bank, appellant, against The City of Louisville, H. R. Thompson, judge of the police court of the city of Louisville, appellees, as the same appears on file and of record in my office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of my office. Done at Frankfort, Kentucky, this 10 day of April, A. D. 1897.

ABRAM ADDAMS,
Clerk Kentucky Court of Appeals.

70 Exhibit "B" with the bill of complaint is as follows:

STATE OF KENTUCKY, }
Jefferson County. }

Jefferson Circuit Court, Common Pleas Division.

THIRD NATIONAL BANK, Plaintiff,
vs.
R. H. THOMPSON, Judge of the Police Court of the City of Louisville, Defendant. } # 4685. Order.

At a court held on the 13th day of April, 1897—

This day came the plaintiff, The Third National Bank, and filed the opinion and mandate of the court of appeals herein, the mandatory part of which is as follows: "It is therefore considered that said judgment be reversed and cause remanded for further proceedings consistent with the opinion;" and thereupon, in pursuance of said opinion and mandate, the judgment heretofore entered herein is set aside and held for naught.

It is now adjudged by the court that the plaintiff's petition sets forth a good cause of action and the defendant's demurrer to the said petition is overruled, and the defendant declined to plead further herein; and thereupon the plaintiff moved for judgment, and it is considered that the prayer of the plaintiff's petition be granted, and that the defendant, R. H. Thompson, judge of the police court of the city of Louisville, be, and he is hereby, prohibited from proceeding further with the warrant against the plaintiff, Third National Bank, mentioned in the petition in the police court of the city of Louisville or making any further order therein; and it is further considered and adjudged that the plaintiff recover of the defendant its costs therein expended and may have execution therefor, and the parties are hence dismissed.

71 STATE OF KENTUCKY, }
Jefferson County. }

I, John S. Cain, clerk of the Jefferson circuit court, do hereby certify that the foregoing is a full, true, and complete copy of the order entered April 13, 1897, in the case wherein Third National Bank is plaintiff and R. H. Thompson, judge of the police court of the city of Louisville, is defendant, # 4685, as the same appears of record and on file in my said office.

Witness my hand and seal as clerk of said court this 16th day of April, 1897.

JOHN S. CAIN,
[SEAL.] *Clerk Jefferson Circuit Court.*

72 Upon which bill of complaint there issued the following subpœna in chancery:

The President of the United States of America to Samuel H. Stone, auditor public accounts, Commonwealth of Kentucky; Charles Finley, secretary of state, Commonwealth of Kentucky; George W. Long, treasurer of the Commonwealth of Kentucky; City of Louisville, Greeting:

You are hereby commanded to appear before our circuit court of the United States of America, for the district of Kentucky, at the Federal court hall, in the city of Louisville, on the first Monday in June next, to answer a bill in equity exhibited against you in our said court, by Third National Bank, which you shall in nowise omit, under the penalty of the law.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the seal of our said circuit court hereto affixed, at the clerk's office of said court, in Louisville, this 17 day of April, A. D. 1897, and in the 121 year of our Independence.

Attest: THOS. SPEED,
[SEAL.] *C. C. C., K. D.*

MEMORANDUM.—The defendant- are to enter their appearance in the suit in the clerk's office on or before the 7 day of June next, the day at which the writ is returnable; otherwise the bill may be taken *pro confesso*.

And the marshal returned said subpœna with the following endorsement thereon:

Executed April 24th, 1897, on the City of Louisville by
73 delivering a copy of the within spa. in cha. to Geo. D. Todd, mayor of the said city.

JAMES BLACKBURN,
United States Marshal,
By R. E. HAWES, *D. M.*

Executed May 4th, 1897, on Chas. Finley, sec'y of state; May 14th, on Geo. W. Long, treasurer; May 15th, on Samuel H. Stone, auditor of public accounts, by delivering a copy of the within spa. in ch'y to each of them.

JAMES BLACKBURN,
United States Marshal,
By R. D. TUCKER, *D. M.*

And on the 27th day of May, 1897, came parties, by counsel, and filed stipulation herein.

Stipulation above referred to is as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

THIRD NATIONAL BANK, Complainant,
versus
SAMUEL H. STONE, &c., Defendants. } No. 6573. Stipulation.

It is stipulated and agreed that the defendant City of Louisville

may file a demurrer to the complainant's bill and an answer at the same time without waiving the demurrer.

HELM & BRUCE,
Counsel for Complainant.
H. L. STONE,
Counsel for Defendant City of Louisville.

Demurrer above referred to is as follows:

74 In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

THIRD NATIONAL BANK, Complainant,
vs.
SAMUEL H. STONE, &c., Defendants.
} No. 6573. In Equity.

The Demurrer of The City of Louisville, Defendant, to the Bill of Complaint of The Third National Bank, Complainant.

This defendant, by protestation, not confessing any or all of the matters and things in the complainant's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, demurs to said bill, and for cause of demurrer states:

1. That the said bill fails to state facts sufficient to show jurisdiction in this court.

2. That the said bill does not contain any matter of equity whereon this court can ground any decree or give to the complainant any relief against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant does demur thereto, and humbly demands the judgment of this court whether it shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

H. L. STONE,
City Attorney, Solicitor for Defendant City of Louisville.

STATE OF KENTUCKY,
Jefferson County,
} *sct:*

Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, George D. Todd,
75 who states that he is mayor and chief officer of the defendant City of Louisville, and the foregoing demurrer is not interposed for delay of the cause in which it is filed.

GEO. D. TODD.

Subscribed and sworn to before me by George D. Todd, mayor, this 27 day of May, 1897. My commission expires January 23, 1900

JNO. F. GROENE,
Notary Public, Jefferson County, Kentucky.

Answer above referred to is as follows:

76 In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

THIRD NATIONAL BANK, Complainant,
versus
SAMUEL H. STONE, &c., Defendant-. } No. 6573. In Equity.

The Answer of The City of Louisville, Defendant, to the Bill of Complaint of Third National Bank, Complainant.

This defendant, now and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had, or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering:

This defendant denies that prior to the passage of the revenue law by the General Assembly of the Commonwealth of Kentucky, approved May 17, 1886, known as the "Hewitt bill," the law of said Commonwealth governing the taxation of banks, was unsatisfactory, or that there were then four banks, or any bank, chartered by said State prior to the year 1856, whose original charter life had not expired, or which held any charter or other contract or contracts beyond the power of the State to repeal, or that the Commonwealth was by any alleged contract or contracts bound, beyond its legislative control or power to alter, amend and repeal, to receive fifty cents on each share of one hundred dollars of stock in said banks, or either of them, referred to as the "old banks," in full of its claim for taxation upon all the different kinds of property of said banks.

This defendant denies that there was any complication with the said old banks, or that in addition to such alleged complication with said old banks, the national banks in the State were claiming the right, or that they had the legal right, to be put upon a footing of equality as to taxation with said four old banks, or either of them, or that the courts of Kentucky had held that the national banks in said State could not be subjected to a heavier burden of taxation than said four old banks.

This defendant denies that no other bank in the State could be taxed at a materially higher rate than fifty cents on each share of one hundred dollars of its stock, without practically driving it out of business, or that it would thereby be unable to compete with said four old banks and the national banks, or that for this reason by the express provisions of the respective charters granted by the State, or by the general law, all banks and other institutions of loan or discount were taxed at the same rate as the old banks and national banks.

77 This defendant denies that the State was dissatisfied with the existing tax rate against banks and similar corporations, or desired to increase the rate, or desired, for the reason alleged, to have the tax rate on all the banks in the State uniform, or that

this could only be done by exempting them from local taxation and increasing their tax to the State, or that it was not within the power of the State to increase the tax rate against the old banks except with their consent, or that they were asked, in the interest of uniformity, to consent, or that, in the interest of uniformity, or to secure to the banking interests in the State, repose on the tax question for the remainder of their respective charter lives, the old banks did consent in the manner stated in the bill to the scheme of taxation therein described, or, as stated in the provisions of the act of May 17, 1886, referred to and quoted in the bill.

The defendant states, section six (6), article two (2), of said act of May 17, 1886, pertaining to the taxation of banks, expressly provided that said act (meaning article 2 therein, with respect to the taxation of banks), should be subject to the provisions of section eight (8), chapter sixty-eight (68) of the General Statutes, which was as follows:

"All charters and grants of or to corporations, or amendments thereof, enacted or granted since the 14th of February, 1856, and all other statutes, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: *Provided*, that whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

This defendant states that by said section six (6), article two (2) of the said act of May 17, 1886, the legislature of the State expressed its intention to reserve, and it did in fact reserve, its power to amend or repeal at the will of the legislature of the State, said act of May 17, 1886, or any part thereof, including the scheme for taxation of banks and the exemption of banks, from county and municipal taxes therein provided for, and a contrary intent was not therein plainly expressed.

This defendant further states that by section five (5) of article twelve (12) of said act of May 17, 1886, all other acts, general and special, and parts of acts inconsistent therewith, or not in conformity therewith, were repealed.

This defendant denies that said act of May 17, 1886, and complainant's alleged acceptance thereunder, as provided by said statute, and complainant's payments thereunder and in accordance therewith, to the State of a sum in excess of that paid by individuals to the State on the same kind of property, and the acceptance thereof by the State, constituted a contract between the State on the one part and complainant and its stockholders on the other part, continuing during the legal existence of complainant's corporate life, or that the State was equally bound thereby, or had no right to retire therefrom or amend or repeal the same, as provided for in section six (6), article two (2) of said act of May 17, 1886.

This defendant denies it was agreed between the State and the complainant that said alleged contract should subsist during the charter life of complainant, without the condition or qualification embodied in said section six (6), or that the State of Kentucky was unmindful of its alleged contract obligations with complainant, or

others, when through its General Assembly it undertook, on November 11, 1892, to tax all the banks in the State in a manner different from that provided for in said alleged contract, and to subject them to all manner of local taxation, or that as applied to complainant the tax under the act of November 11, 1892, will exceed the tax which it would have to pay under the Hewitt bill by $—.

This defendant denies that the ordinance of 1894, providing for a license tax of four per cent. of the gross receipts or earnings of the banks and trust companies in the city of Louisville, in lieu of an *ad valorem* tax, was adopted under the authority of the statute entitled "An act for the government of cities of the first class," approved July 1, 1893, or in pursuance thereof, although it was
78 claimed that such authority existed when said ordinance was adopted; or that the defendant, on the demand of said license tax being refused, commenced legal proceedings in the city court of Louisville in behalf of the city against all of said banks and trust companies, including the complainant.

This defendant denies that it was agreed between the city of Louisville and the commissioners of the sinking fund of the city of Louisville upon the one part, and the said banks and trust companies, including the complainant, upon the other, that, pending the litigation concerning the validity of said ordinance providing for a license tax upon said banks and trust companies, payments and loans to said commissioners of the sinking fund should be made, in the manner or upon the terms and conditions, as stated in complainant's bill, or that this defendant agreed that said litigation should be inaugurated, or that such alleged payments or loans to said commissioners of the sinking fund should be without prejudice to the alleged rights of said banks and trust companies, or either of them.

This defendant denies that it agreed, as alleged in complainant's bill, to the selection of any bank or company to test the questions involved in said litigation, or that this defendant made, entered into, or was a party to said alleged contract or agreement, written or verbal, with respect to said litigation over the validity of said license tax, or the ordinance providing for the collection thereof from the banks and trust companies in the city of Louisville, or that said banks and trust companies should be divided into three classes, to wit:

A. Banks whose charters had been granted prior to 1856.

B. Banks whose charters had been granted subsequent to 1856.

C. National banks.

This defendant denies that it was understood that the trust or title companies, which are alleged to have accepted the provisions of the Hewitt bill would fall in said class "B," or that this defendant agreed that if any bank in any class should eventually fail to establish the existence or validity of the contract which it was claimed was made under the Hewitt bill, that all of that class should thereafter regularly and promptly submit to the existing laws and pay their taxes, or that this defendant agreed that if any bank of

any class should succeed in establishing the alleged contract, or the validity thereof under the Hewitt bill, that that should exempt all banks and trust companies, or any bank or trust company falling within that or any of said alleged classes from the payment of taxes, except as provided in the Hewitt bill.

This defendant denies that said alleged agreement, an alleged copy of which, or the substance of which is filed with complainant's bill, marked "A," was signed by the attorney for the city of Louisville under the authority or direction of the mayor, or that this defendant executed or delivered said alleged contract or agreement, or that the same was ever authorized, ratified, or approved by the general council and mayor of the city of Louisville, and said alleged agreement or contract set forth in said copy marked "A" is not the act and deed of this defendant, and in so far as the same purports to be an agreement or contract by or with this defendant it was beyond the lawful power or authority of the city attorney, mayor, or any other officer of this defendant to execute or deliver for or on behalf of this defendant, and the same was made without express authority of law, and was and is null and void, and of no binding force or effect upon this defendant, nor does the same operate to prevent or defeat the power and authority vested in this defendant by said act entitled "An act for the government of cities of the first class," approved July 1, 1893, to levy and collect its municipal taxes from the complainant and other banks and trust companies.

This defendant states that said commissioners of the sinking fund of the city of Louisville was, in 1894, and long prior thereto, and ever since has been, a separate and distinct corporation from this defendant, organized and existing under the laws of the State of Kentucky, with power to sue and be sued, contract and be contracted with, and to do and perform all things necessary to execute the duties required and powers given by the act incorporating the same and the amendments thereto; but, neither said commissioners of the sinking fund of the city of Louisville, nor the president nor the attorney thereof, nor all of them together, had any lawful power or authority thus to bind or obligate defendant by the terms, conditions, stipulations, or covenants, or either of them, contained in said alleged agreement or contract, at the time, in the manner, or under the circumstances alleged in complainant's bill, or otherwise.

79 This defendant denies that said alleged agreement or contract was duly executed, or on the faith, or in reliance thereon, the various banks and trust companies of the city of Louisville, including the complainant, or either of them, paid into the said sinking fund the amounts of taxes claimed against them, under the terms and conditions named in the alleged minutes of said commissioners of the sinking fund; or that at a still later date, the said banks and trust companies, except those already involved in the alleged test cases, paid the whole amount of the taxes claimed against them by this defendant, without reservation, until the question should be finally disposed of, or that this was done without prejudice to the alleged rights of said banks and trust companies, or was not to be deemed a waiver by them of any of their claimed

rights, or that the same was done to prevent confusion from coming into the management of said sinking fund, or that the taxes against banks claimed by the city had been transferred to the sinking fund of said city, except as provided for in said license-tax ordinance, which was invalid and unconstitutional, because the license tax aforesaid was, and was intended to be, by said ordinance in lieu of the *ad valorem* tax levied upon all other assessed, individual and corporate, tangible and intangible, property in the city of Louisville, and thus violated the constitution of the State of Kentucky.

This defendant denies that it made any agreement that the said alleged payments to said sinking fund should not last longer than the alleged final decision in favor of the banks, if such decision should be rendered, or that the amount paid by the banks and trust companies to this defendant, or said commissioners of the sinking fund, under said alleged agreement, was or is over $150,000.

This defendant denies that with a view of testing every phase of the question, or so that a decision when rendered would determine the liability of every bank and trust company in the city of Louisville, three suits were brought pursuant to said alleged contract, or that there was any contract with this defendant to do so, or that the Bank of Kentucky in the suit it brought represented the Bank of Louisville, or that the Louisville Banking Company in the suit it brought represented all or either of the other banks and trust companies in the city whose charters were granted by the State since 1856, or that the Third national bank, in the suit brought by it, represented all or either of the other national banks of the city.

This defendant denies that it was a party to the said suits brought by the Bank of Kentucky, Louisville Banking Company, and the Third national bank, or either of them, or that this defendant prosecuted an appeal from the judgment of the Jefferson circuit court against the Bank of Kentucky, or that either the Louisville Banking Company or the Third national bank prosecuted an appeal from the judgment of said court against this defendant, or that either of said three suits was really against the city of Louisville; or that in the court of appeals this defendant was represented by its corporation counsel, or that said counsel represented any party in either of said cases in said court or the Jefferson circuit court, except R. H. Thompson, judge of the police court of the city of Louisville, and, indirectly, said commissioners of the sinking fund, for whom he was then the regularly employed attorney, and to whom the license tax against said banks and trust companies, under the ordinance aforesaid, was made payable.

This defendant denies that it was a party to the record in the court of appeals on either of said three appeals, or as such was represented in that court by its official attorney.

This defendant states that the records in said three cases will show what questions were submitted to the circuit court and court of appeals, and what were the issues made by the pleadings and decided by each of said courts, as well as what the contentions of each party were before said courts, and this defendant denies all statements in complainant's bill inconsistent with the records aforesaid. It is

true, however, that the court of appeals, on June 1, 1895, decided on said three appeals that the license tax for the fiscal year ending August 31, 1894, fixed by the ordinance aforesaid, was invalid and not enforceable against the Bank of Kentucky, Louisville Banking Company, and the Third national bank, which had complied with the provisions of the act of March 17, 1886, and that the provisions of the constitution of the State of Kentucky, adopted September 28, 1891, and of the general revenue law, approved November 11, 1892, did not repeal the provisions of article two (2) of the Hewitt bill, with respect to said three banks, and that said three banks had an irrepealable contract with the State to pay their taxes, as provided in the Hewitt bill; and in pursuance of said decision the said judge of the police court of the city of Louisville was prohibited from taking any further steps or proceedings upon the warrants issued against said three banks and pending in said police court for carrying on a banking business during the fiscal year ending August 31, 1894, without paying the license tax, as provided in the ordinance aforesaid.

80 This defendant denies that said former adjudication constitutes a bar to any further claim by or on behalf of the city of Louisville for *ad valorem* taxes, or other taxes not involved in said actions against said three banks which instituted said actions, or a bar to any claim for *ad valorem* taxes by or on behalf of this defendant against complainant, or either of the other banks and trust companies in the city of Louisville, provided, or in the event, the court of appeals of the State of Kentucky at any time should overrule its said decision rendered on June 1, 1895, in the actions aforesaid, and decide that the banks and trust companies in said State have no such irrepealable contract, and are bound to pay taxes on their property, tangible and intangible, to the State and to the counties and municipalities in which their places of business are located, at the same rate fixed therein as against individuals and all other corporations, in accordance with the provisions of the State constitution of September 28, 1891, and said general revenue law of November 11, 1892, set forth in complainant's bill.

This defendant denies that the scheme of taxation contained in said act of November 11, 1892, impairs the obligation of complainant's alleged contract, or is, for that reason, in violation of the provision of the Federal Constitution, prohibiting a State from impairing the obligation of a contract, or that said scheme of taxation is in violation of section 181 of the State constitution, which declares that the "General Assembly shall not impose taxes for the purposes of any county, city, town, or other municipal corporation, but may, by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect such taxes," and this defendant denies that the General Assembly, by the provisions of the revenue law of November 11, 1892, has imposed taxes for the purposes of any county, city, town, or other municipal corporation, and the court of appeals of the State of Kentucky has construed said section of the State constitution as meaning that the General Assembly shall not impose or fix the *amount* or *rate* of taxes for the purposes

of any county, city, town, or other municipal corporation; and has further decided, as has the Supreme Court of the United States, that the provisions of said revenue law of November 11, 1892, with respect to the assessment of the franchises or intangible property, of corporations, companies, and associations by the State board of valuation and assessment, in the method set forth in the complainant's bill, are not violative of, but in harmony with, the constitution of the State of Kentucky.

This defendant denies that the city of Louisville claimed, or threatened at or before the institution of this action, or does now claim or threaten, or so long as said decision of the court of appeals of Kentucky, rendered June 1, 1895, referred to in the complainant's bill, remains in full force and effect, will claim the right to collect, or threaten to collect, from the complainant any tax held to be unlawful by said decision, or under the revenue law of November 11, 1892, on either an assessment by the city assessor of this defendant, or by the State board of valuation and assessment.

This defendant denies that the State board of valuation and assessment will, unless restrained by this honorable court, proceed to assess the complainant in the manner pointed out by the act of November 11, 1892, when it has no lawful right to do so, or that it will thereby cast a cloud upon the complainant's alleged right to pay taxes under and in accordance with its alleged contract, or that the auditor will, unless restrained, certify said assessment to the county court clerk of Jefferson county, or that said clerk will, in turn, certify the same to the tax collector of the city of Louisville, or that this defendant will attempt to collect from the complainant a tax in its favor upon said assessment, or that the complainant will thus be subjected to harassment or litigation, or that if said assessment be not restrained or is allowed to be made the State of Kentucky will claim that unless the complainant pays taxes according to said alleged illegal scheme devised by said State that the complainant would be subject to the penalties and interest on State taxes, as provided in the revenue law of November 11, 1892.

This defendant denies that, unless restrained, the complainant will be improperly annoyed or harassed with litigation, or the value of its stock greatly, or at all, impaired, or the stockholders injured by suits instituted by this defendant or the State in their attempt, respectively, to enforce, as against the complainant, the taxes attempted to be imposed or the penalties denounced by the statute aforesaid.

This defendant denies that it was, at or before the institution of this action, or is now insisting that the auditor of the State, the defendant, Samuel H. Stone, shall certify to the county court clerk of Jefferson county the assessment alleged to have been, or to be illegally, made by said State board, so that its tax collector may endeavor to enforce, as against the complainant and the other banks and trust companies in the city, the taxes for city purposes;
81 and this defendant denies that the said auditor has threatened to so certify said assessment, or will, unless restrained, certify

said assessment for the years 1895, 1896, and 1897, or either of them, to the said clerk, or that said clerk will certify the same to the tax collector of the city of Louisville, or that any further assessment by said State board, or for the years 1895, 1896, and 1897, or either of them, has been, or is, threatened or will be made, or that any such certification thereof has been, or is, threatened, or will be made by said auditor, so long as said decision of the court of appeals of Kentucky of June 1, 1895, is not overruled and remains in full force and effect.

This defendant, for further answer and defense to complainant's bill, states that the court of appeals of Kentucky, on March 24, 1897, in the case of Deposit Bank of Owensboro *v.* Daviess County, and other bank tax cases, wherein the same legal questions were involved and issues were made, as in the three cases referred to in the complainant's bill, rendered a decision in which the former decisions of said court, in said three cases delivered June 1, 1895; and in the cases of Franklin County Court *v.* Deposit Bank of Frankfort, Same *v.* Bank of Kentucky, and other bank tax cases, decided June 5, 1888, reported in 87 Ky. Rep., 370, were expressly overruled; and said court furthermore, in substance, decided that no bank, State or national, trust company, or other similar institution in the State of Kentucky, had or was entitled to an irrepealable contract with the State under the provisions of the Hewitt bill, or by reason of its acceptance of, or compliance with, those provisions, and that the same, with respect to all said banks and similar institutions in the State, were repealed by the State constitution of September 28, 1891, and the general revenue law of November 11, 1892, and were bound and liable to pay State, county, and municipal taxes, and at the same rate as individuals and other corporations; that the legislature of Kentucky reserved in section six (6), article two (2), of said act of May 17, 1886, the power at will to amend or repeal the scheme of bank taxation provided for in said article of said act, which express reservation of power to amend or repeal formed a part of the contract, if any, between the State and the banks, and other similar institutions, which had accepted the provisions of said act and complied therewith; that the repeal of the Hewitt bill, with respect to the method and rate of bank taxation by the State constitution and general revenue law of November 11, 1892, did not impair the obligation of any contract with such banks, but that said repeal was only a legitimate exercise of the said reserved power in the legislature to amend or repeal; and that the acts of the legislature, adopted subsequent to February 14, 1856, amending the original charters of said four old banks, were grants to said corporations and extensions of the period of their charter existence, within the purview of the statute of February 14, 1856, referred to in the complainant's bill, and were all subject to amendment or repeal by the legislature.

This defendant states that by the concluding section of said revenue law of November 11, 1892, all acts or parts of acts in conflict therewith, including the Hewitt bill, with respect to taxation, were repealed.

This defendant states that said decision of March 24, 1897, by the rules of said court of appeals, does not become final until the expiration of thirty days, excluding Sundays, after the date of its rendition, nor until the expiration of such further time as may be given within said period by said court in which to file a petition for a rehearing, nor until such petition for a rehearing is overruled; and this defendant states that, within said period of thirty days, said court gave further time to counsel representing the banks, which were parties in said cases so decided, to wit: sixty days, excluding Sundays, from March 24, 1897, in which to file petitions for a rehearing, some of which have been filed, and said period of extension has not yet expired, nor has said decision become final.

This defendant, while disavowing any intention or purpose, on its part, to collect or attempt to collect municipal taxes from the complainant, or any other bank or trust company in the city of Louisville, held to be unlawful by said decision of the court of appeals of Kentucky, of June 1, 1895, so long as said decision is not overruled and remains in full force and effect, it avers that should said decision of said court of March 24, 1897, become final and in full force and effect, it will, in that event, as in duty bound, proceed to collect from the complainant and all other banks and trust companies, municipal taxes in accordance therewith, and as authorized by the laws of the State of Kentucky, but not otherwise.

This defendant states that the complainant has not filed its annual report for the years 1895, 1896, and 1897 with the auditor or the State board of valuation and assessment, as required by the revenue law of November 11, 1892.

82 This defendant denies that the existing laws of the State of Kentucky do not provide for taxing the shares of stock of the complainant, as permitted by act of Congress, or that the franchise law of said State taxes the franchise granted by the Congress of the United States, or taxes its intangible property, surplus, undivided profits, and investments without lawful right to do so or contrary to the act of Congress in such cases made and provided, or that the complainant has never consented to said method of taxation, or that such consent was necessary, or that the complainant has always or at any time protested against the same as illegal or contrary to the act of Congress; and this defendant denies that said statute is repugnant to the act of Congress in such cases made and provided, or because of such alleged repugnancy it is void or of no binding force as against the complainant.

This defendant denies that the capital of the four old banks was about equal to the combined capital of all the other State banks, or that the courts of Kentucky for that reason or on any other ground held that the national banks could not be subjected to a heavier burden of taxation than said old banks, or that, in view of the alleged fact that said four old banks have a capital stock about equal to the combined capital of the other State banks, the complainant is entitled to be put upon a footing as to taxation equally favored with said old banks, or cannot be taxed at a higher rate than said old banks without an unjust discrimination against the

complainant and other national banks, or contrary to the act of Congress.

This defendaut denies that the Commonwealth of Kentucky has deliberately or at all undertaken to violate or that it has violated its alleged contract with the banks of said State, or any of them, or that by the voluntary action of the State the said four old banks, or either of them, have been restored to their original alleged contract right to discharge themselves from all taxation by the payment of fifty cents on each share of their stock in lieu of all other taxation, or that complainant and the other national banks of the city of Louisville, or either of them, is or would be entitled to be put upon the same footing as to taxation with said old banks.

83 This defendant denies that by reason of the alleged formal contract alleged to have been entered into by all the other banks and trust companies establishing the validity of said alleged contracts they or either of them will escape local taxation, except on the houses owned by them respectively in which they respectively do business, or that the complainant, coming in competition with said institutions, will be driven out of business if subjected to local taxation, or that any unjust or other discrimination between the complainant and said other institutions will result.

84 This defendant, therefore, submits that the complainant was not at the institution of this action, and is not now, being subjected to any false claim or claims, nor to any suit or suits, nor will it suffer irreparable or any injury, unless an injunction *pendente lite* be granted herein commanding this defendant, its officers and agents, to refrain from endeavoring by distraint, suit, or otherwise, from collecting or attempting to collect any of the taxes on assessments heretofore certified to it, based on the alleged illegal assessment of the franchise of the complainant until the further order and determination of this court.

This defendant denies that the complainant is entitled to any injunction whatever, or to any other equitable relief in this court.

Wherefore, having answered, this defendant prays that the complainant's bill be dismissed, with judgment for its costs, and for all other relief to which it in equity may appear to be entitled.

H. L. STONE,
City Attorney, Solicitor for the Defendant City of Louisville.

STATE OF KENTUCKY, }
Jefferson County, } *sct:*

Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, the affiant, George D. Todd, who states he is the mayor and chief officer of the defendant, City of Louisville, and the facts stated in the foregoing answer so far as stated from his personal knowledge are true, and so far as stated from information he believes the same to be true.

GEO. D. TODD.

Subscribed and sworn to before me by said George D. Todd, mayor, this 27 day of May, 1897.

My commission expires January 23, 1900.

JNO. F. GROENE,
Notary Public of Jefferson County, Kentucky.

85 And on the 28th day of May, 1897, the following order was entered:

This day came complainant in the above-entitled cause and filed herein notice of motion to be entered herein this day; and thereupon came the complainants The Bank of Kentucky and The Bank of Louisville, by Humphrey & Davie, counsel, and the complainants in all the other causes, by Helm & Bruce, counsel, and moved the court to enter an order herein enjoining and restraining the defendants Samuel H. Stone, Geo. W. Long, and Chas. Finley, comprising the board of valuation and assessment, from valuing or certifying the value of the intangible property and franchise of the complainants under the act of November 11th, 1892, until the further order of this court herein, and enjoining and restraining the other defendants herein, to wit, The City of Louisville, The County of Franklin, and The Board of Councilmen of the City of Frankfort, from endeavoring to collect any taxes under such certification until the further order of the court.

And at the same time the City of Louisville, appearing herein by H. L. Stone, city attorney, and the County of Franklin, appearing herein by Ira Julian and J. H. Polsgrove, and the Board of Councilmen of Frankfort, appearing herein by Ira Julian, objected to the said motion, and the same was argued and submitted, and the court, not being advised, takes time.

And at the same time came the Board of Councilmen of the City of Frankfort and the County of Franklin, by the said Ira Julian and J. H. Polsgrove, and filed herein a demurrer to the bill of complaint of the Bank of Kentucky to the jurisdiction of the court, and also a general demurrer, and, by consent and without waiving the effect of said demurrer, filed answers of the said Board

86 of Councilmen of the City of Frankfort and the County of Franklin to the said bill of complaint.

And also came the said Samuel H. Stone, Geo. W. Long, and Chas. Finley, by W. S. Taylor, attorney general, and filed herein their several demurrers to the said bill of complaint; and the said cause, having been argued by counsel upon the said general and special demurrers as well as upon the demurrers of the City of Louisville, was submitted, and the court, not being advised, takes time.

Said demurrer above referred to is as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

THIRD NATIONAL BANK, Complainant,
vs.
SAMUEL H. STONE, ETC., Defendants. } No. 6573.

The demurrer of the defendants Samuel H. Stone, auditor; Charles Finley, secretary of state, and George W. Long, treasurer of the State of Kentucky, to the bill of complaint of Third National Bank, complainant.

These defendants, by protestation, not confessing any or all of the matters and things in the complainant's bill of complaint contained to be true in such manner and form as the same *is* therein set forth and alleged, demur to said bill, and for cause of demurrer state:

87 1. That the said bill fails to state facte sufficient to show jurisdiction in this court.

2. That the said bill does not contain any matter of equity whereon this court can ground any decree or give to the complainant any relief against these defendants.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

W. S. TAYLOR,
Attorney General of the State of Kentucky.

I hereby certify, as counsel for the defendants Samuel H. Stone, auditor; Charles Finley, secretary of state, and George W. Long, treasurer of the State of Kentucky, in the foregoing demurrer, that, in my opinion, the same is well founded in point of law and proper to be filed.

W. S. TAYLOR,
Attorney General of the State of Kentucky.

And on May 9th, 1898, came this day the complainant in the above-styled case, wherein Samuel H. Stone is one of the defendants, and filed herein an amended and supplemental bill of complaint, and the complainant in this case also filed herein notice, duly served, of the motion to be made this day; and came Samuel H. Stone, Charles Finley, and G. W. Long, by Richard Ernst, their attorney, and entered appearance to such motions; and also came the City

88 of Louisville and objected to the filing of said supplemental bill of complaint and said motion, and filed herein affidavits to be read in each case; and also came the City of Frankfort and Franklin County and objected to the motions made in cases to which these defendants are parties; and, the court being advised, it is now ordered, adjudged, and decreed that the said

defendants in the above-styled case are enjoined and restrained as follows:

The defendants Stone, Finley, and Long are enjoined and restrained from making or certifying any assessment against the complainant for the years 1895, 1896, 1897, and 1898 or any of them, and the defendant The City of Louisville is enjoined and restrained from bringing or maintaining any action against the complainant on account of assessments heretofore made and certified for the years 1893 or 1894, or from attempting, by distraining or otherwise, from collecting taxes on said assessments for either of said years.

This order is only to stand until Saturday, June 4th, 1898, when the court will announce its decision on pending questions; to all of which defendants excepted.

Amended and supplemental bill above referred to is as follows:

United States Circuit Court, District of Kentucky.

THIRD NATIONAL BANK, Complainant,
vs.
SAMUEL H. STONE, &c., Defendants.
} Amended and Supplemental Bill.

The Third National Bank, complainant herein, and by way of amended and supplemental bill in this cause, says that since the filing of the original bill herein and the hearing before this
89 court of the motion for an injunction the defendants Samuel H. Stone, Charles Finley, and G. W. Long, being respectively the auditor of public accounts, the secretary of state, and the treasurer of the State of Kentucky, and as such constituting the board of valuation and assessment of the State of Kentucky, have threatened and are now threatening to assess and will, as such board, unless restrained by this honorable court, proceed to assess your orator for taxation in the manner pointed out by the act of November 11th, 1892, referred to in the original bill herein, for the year 1898, when they have no lawful right to do so for the reasons shown in the original bill herein, and will thereby cast a further cloud upon your orator's right to pay taxes under and in accordance with its contract, which is fully set forth and explained in the original bill herein; and the said Samuel H. Stone, as auditor aforesaid, will, unless restrained, certify said assessment to the county clerk of Jefferson county, Kentucky, who will in turn certify the same to the tax collector of the city of Louisville, and said city will attempt, by distraint and otherwise, to collect from your orator a tax in favor of said city upon said assessment for the year 1898.

Wherefore your orator prays as in its original bill herein, and that a writ of subpœna issue on this supplemental bill against the defendants to appear and answer same (but not under oath, which is waived), and that they and each of them be enjoined from making or certifying any assessment for taxation against your orator or attempting to collect any tax from your orator for the year 1898 or

any other year until the final order and determination of this
90 court, and for all general and equitable relief to which your orator may be entitled.

HELM & BRUCE,
For Complainant.

H. W. Reese says he is the president of complainant, and that the statements in the foregoing supplemental bill are true.

H. W. REESE.

Subscribed and sworn to before me by H. W. Reese this May 6th, 1898.

HUSTON QUIN,
N. P., J. C., Ky.

Commission expires with next Kentucky legislature.

And on June 4th, 1898, the following order was entered:

It is ordered by the court that the preliminary injunction heretofore granted in this case be, and the same is hereby, continued until 25th day of June, 1898.

And on the 25th day of June, 1898, came the complainant and offered an amended bill herein, to which the defendant objected, and the court, being advised, allowed said amendment to be filed, except the 3d paragraph thereof, which the court disallowed without prejudice to the right of the complainant to raise that question in another proceeding so far as it affected State taxes. Then came the defendant The City of Louisville and filed a demurrer to the amended bill, which is sustained; to which the complainant excepts.

Amended bill above referred to is as follows:

Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

THIRD NATIONAL BANK, Complainant,
versus
S. H. STONE ET AL., Defendants.
} Amended Bill.

1. The Third National Bank be leave of court amends its
91 bill herein, and says that it was originally organized under the authority of an act of Congress approved June 3rd, 1864. That within two years next previous to the date of the expiration of its corporate existence under the act aforesaid it did, with the approval of the Comptroller of the Currency and under and by virtue and authority of an act of Congress entitled "An act to enable national banking associations to extend their corporate existence, and for other purposes," approved July 12th, 1882, extend its period of succession by amending its articles of association for a term of twenty years from and after August 6th, 1894. Said amended articles of your orator were duly authorized by the consent in writing of your orator's shareholders owning not less than two-thirds of the capital stock of the association, and the board of directors of your orator caused such consent to be certified, under

the seal of the association, by its cashier to the Comptroller of Currency, accompanied by an application made by said cashier for the approval of said amended articles of association by the said comptroller, and thereupon the said comptroller gave to your orator a certificate under his hand and seal that your orator had complied with all the provisions required to be complied with and was authorized to have succession for the extended period named in said articles of association. Said certificate is as follows:

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, *August* 6, 1894.

"Whereas, by satisfactory evidence presented to the under-
92 signed, it has been made to appear that 'the Third National Bank of Louisville,' in the city of Louisville, in the county of Jefferson and State of Kentucky, has complied with all the provisions of the 'Act of Congress to enable national banking associations to extend their corporate existence, and for other purposes, approved July 12, 1882:'

Now, therefore, I, Oliver P. Tucker, deputy and acting Comptroller of the Currency, do hereby certify that 'the Third National Bank of Louisville,' in the city of Louisville, in the county of Jefferson and State of Kentucky, is authorized to have succession for the period specified in its amended articles of association, namely, until close of business on August 6, 1914.

In testimony whereof witness my hand and seal of office the sixth day of August, 1894.

[SEAL.] O. P. TUCKER,
Deputy and Acting Comptroller of the Currency."

"No. 2111."

2. Your orator shows to the court that on the 5th day of June, 1888, it was adjudged by the court of appeals of Kentucky that the Bank of Kentucky had a charter contract right, irrepealable in nature and running through its extension, which does not expire until October 1st, 1909, to discharge itself of all its tax burdens, State and local, by the payment of fifty cents on each share of its capital stock.

The principal office of said Bank of Kentucky is in Louisville, Kentucky. It has a capital and surplus of $2,716,550, whereas the total capital and surplus of all the national banks, seven in
93 number, doing business in the city of Louisville is only $3,811,343.

Your orator shows that the Bank of Kentucky accepted the terms of the Hewitt law, and thereby consented to an increase of its taxation as follows:

1st. An increase of from fifty cents to seventy-five cents on each share of its capital stock.

2nd. An additional tax for State purposes of the current rate on real estate on all its surplus ocer ten per cent. of the par value of its stock.

3rd. An additional tax for municipal purposes on the real estate owned by the bank for conducting its business.

One of the considerations which induced said bank to accept the provisions of the Hewitt law was to secure uniformity of taxation on capital engaged in banking business, and after that bank and all others in Louisville (except one) accepted the provisions of the Hewitt law there was in said city of Louisville equality in taxation upon all the banks of the city, and this equality remained undisturbed for over six years, when the Commonwealth of Kentucky, having the power to preserve uniformity which had as aforesaid lasted over six years, disturbed and destroyed that uniformity by the passage of the act of November 11, 1892, referred to in the original bill. The passage and attempted enforcement of said act resulted in the litigation and adjudication particularly set out in the original bill, the effect of which is that other banks as well as the Bank of Kentucky, together employed the great bulk of monied capital engaged in the business in the city of Louisville, are taxed only in the
94 method provided for in the Hewitt law hereinbefore and in the original bill set out, whereas, if your orator must pay under the law of November 11, 1892, it will have to pay in the aggregate more that three times as much as it would pay if taxed on the same principle as those banks which have contracts with the State under the Hewitt law aforesaid.

3. Your orator respectfully shows that this discrimination against it in favor of other capital similarly employed, brought about by the voluntary action of the Commonwealth of Kentucky, will result in the greatest injustice and oppression to it and may result in driving it out of business entirely, and your orator respectfully submits that it was and is the purpose of the national banking act and its amendments to protect institutions organized thereunder against such discrimination.

Your orator further shows that under the laws of Kentucky provision is made for a State board of equalization, which annually meets at the capital of the State, at Frankfort, and there equalizes the assessments of all the real and personal property of the individual citizens of the State in the manner and on the basis hereinafter stated. Said board regularly meets each year and undertakes to carry out the provisions of said act, and especially the sections hereinafter quoted governing the State board of equalization, and the said board regularly meets each year and has been in the habit of meeting each year for a great many years in the past. By said act it is provided as follows:

"SECTION 4274. Percentage of value to be fixed on real property—Report to county judges—Witnesses.—The said board of equalization shall fix the percentage of assessed value of real property at seventy per centum of cash value, and all counties
95 whose average lists of real property are below such per centum shall be raised to the same, and all those counties whose average lists are above the same, shall be lowered to said standard. The secretary of the State board of equalization shall report to the various county judges of this Commonwealth, as

soon as possible, the action of the board in regard to their respective counties, whereupon, said judges may, in their discretion, each appoint not exceeding five witnesses to appear under oath before said board in reference to the action of the board. The board shall then revise their action, or not, as they may think just and proper. Said witnesses must appear in a reasonable time, or they shall lose their rights to be heard. The compensation and expenses of said witnesses, if any, shall be paid by their respective county courts."

And by said act it is further provided, as to the equalization of personal property, as follows:

"SECTION 4275. Percentage of value to be fixed on personal property.—The said board of equalization shall also equalize the personal property of every county in this Commonwealth, by adding to or subtracting from the list of personal property, as the case may be, the same per centum as was added to or subtracted from the list of farm lands for the same county, and for this purpose the average per centum of assessed value to cash value of farm lands shall be used, and in determining such per centum, fractions less than one-half shall be rejected and fractions of one-half and over shall be counted as one."

Said act provides the method of ascertaining the cash value of said real and personal property, and after thus ascertaining said cash value all assessments are equalized on a basis of
96 seventy per cent. of that cash value.

Said act was first adopted May 10, 1884, and has never been repealed, but has been amended from time to time, and has been each year from that time to the present enforced and carried out, especially the sections above quoted, by the said State board of equalization. Said act is entitled "An act to equalize assessments for revenue purposes and to provide for a State board of equalization."

The result of enforcing this statute is that the individual citizens of the State are taxed on a basis not exceeding seventy per cent. of the cash value of their property, while your orator, under the terms of the act of November 11, 1892, fully set out in the original bill, is taxed on the full book or apparent value of all its assets, which is much in excess of its real value, and is denied the privilege accorded to the individual citizens of the State of having the assessment of its property equalized on the basis of seventy per cent. of its cash value.

Your orator shows that it is thus denied the equal protection of the laws guaranteed by the fourteenth amendment of the Federal Constitution, and is discriminated against your orator in favor of the individual citizens of the State, contrary to the provisions of the national banking act and its amendments.

Wherefore your orator prays as in the original bill, and for all such general and equitable relief as to the court may seem proper and just under the circumstances; and your orator will ever pray.

HELM & BRUCE,
Solicitor for Complainant.

H. W. Reeso says he is the president of complainant, and that he believes the statements contained in the foregoing amended
97 bill are true.

H. W. REESE.

Subscribed and sworn to before me by H. W. Reese this 20th day of June, 1898. HUSTON QUIN,

Notary Public for Jefferson County, Kentucky.

My commission expires with the next session of the Kentucky legislature.

Demurrer to amended bill is as follows:

98 In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

THIRD NATIONAL BANK, Complainant,
versus
S. H. STONE, &c., Defendants. } #6573. In Equity.

The Demurrer of The City of Louisville, Defendant, to the Amended Bill of Complaint of Third National Bank, Complainant.

This defendant, by protestation, not confessing any or all of the matters and things in the complainant's amended bill of complaint contained to be true, in such manner and form as the same is therein set forth and alleged, demurs to the said amended bill, and for cause of demurrer states:

1. That the said amended bill fails to state facts sufficient to show jurisdiction in this court.

2. That the said amended bill does not contain any matter of equity whereon this court can ground any decree, or give to the complainant any relief against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said amended bill, this defendant does demur thereto, and humbly demands the judgment of this court, whether it shall be compelled to make any further or other answer to the said amended bill; and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

H. L. STONE,

City Attorney, Solicitor for Defendant City of Louisville.

I hereby certify, as counsel for the defendant, City of Louisville, in the foregoing demurrer, that in my opinion the same is well founded in point of law, and proper to be filed.

H. L. STONE,

City Attorney, Solicitor for Defendant City of Louisville.

STATE OF KENTUCKY, }
Jefferson County, } *sct:*

Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, Charles P. Weaver, who

states that he is the mayor and chief officer of the defendant, City of Louisville, and the foregoing demurrer is not interposed for delay of the cause in which it is filed.

CHAS. P. WEAVER.

Subscribed and sworn to before me by said Charles P. Weaver, mayor, this 23 day of June, 1898.

My commission expires January 23, 1900.

JNO. F. GROENE,
Notary Public, Jefferson County, Kentucky.

99 And on the 25-h day of June, 1898, the following order was entered:

This cause having been submitted and brought on to be heard on the complainant's motion for a temporary injunction and on the defendants' demurrers to the bill of complaint and the amended bill of complaint, and due deliberation having been had, it is ordered, adjudged, and decreed that the complainant's said motion be, and the same is, overruled, and that the said demurrers of the defendants be, and the same are, sustained, and that the complainant's bill of complaint as amended be, and the same is hereby, dismissed with costs to the defendants, to be taxed.

And now came the complainant and prayed an appeal in open court and tendered its assignments of errors. Whereupon the court allows the appeal and orders the assignments of errors to be filed and fixes the appeal bond herein at $1,000.

Assignment of errors above referred to is as follows:

Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

THIRD NATIONAL BANK, Complainant,
vs.
SAMUEL H. STONE, &c., Defendants. } 6573.

The complainant assigns the following as the errors of the court in the above-styled case of which complaint is made:

1st. The court erred in sustaining a demurrer to the bill of the complainant.

100 2nd. The court erred in sustaining the demurrer to the bill of complaint as amended.

3rd. The court erred in refusing to allow paragraph three of the amendment to be filed.

4th. The court erred in holding that the complainant could be subjected to the tax of the city of Louisville under the general law when the great bulk of moneyed capital engaged in the banking business in the city of Louisville is taxed at a rate so much less onerous, amounting to not more than one-third as much as the tax against complainant, if it may be taxed under the general law.

5th. The court erred in holding that the contract of the complainant with the State of Kentucky expired on the — day of July,

1894, and did not extend through its corporate existence, which does not expire until 1914.

HELM & BRUCE.
For Compl't.

The bond above referred to is as follows:

Circuit Court of the United States, District of Kentucky.

THIRD NATIONAL BANK OF LOUISVILLE, KY.,
vs.
SAMUEL H. STONE ET AL.

Know all men by these presents that we, The Third National Bank of Louisville, Ky., and E. C. Bohne, are held and firmly bound unto Samuel H. Stone, Charles Finley, & G. W. Long, &
101 the City of Louisville in the sum of one thousand dollars, to be paid to the said Samuel H. Stone, Charles Finley, G. W. Long, & the City of Louisville, executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 18th day of July, A. D. 1898.

Whereas the above-named Third National Bank of Louisville hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such that if the above-named Third national bank shall prosecute its said appeal to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THIRD NAT'L BANK OF LOUISVILLE, KY., [L. S.]
By E. C. BOHNE, *Cashier.* [L. S.]
E. C. BOHNE. [L. S.]

Sealed and delivered in presence of—

HENRY F. CASSIN,
Deputy Clerk U. S. Circuit Court.

102 And on the 25th day of June, 1898, came the parties, by counsel herein, and filed their stipulation herein, which is as follows:

Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

THIRD NATIONAL BANK, Complainant,
vs.
SAMUEL H. STONE, &c., Defendants. } No. 6573.

By agreement of the parties hereto, no citation need be issued or served.

HELM & BRUCE,
Sol. for Compl't.
H. L. STONE, *City Att'y.*

103 DISTRICT OF KENTUCKY, *ss:*

I, Thomas Speed, clerk of the circuit court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing 102 pages contain a true and correct transcript of the record in the case mentioned in the caption hereof, as the same appears from the files and records in my said office.

Witness my hand and the seal of said circuit court this 10th day of August, A. D. 1898.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

THOS. SPEED, *Clerk*,
By HENRY F. CASSIN, *D. C.*

Endorsed on cover: Case No. 16,989. Kentucky C. C. U. S. Term No., 404. The Third National Bank of Louisville, appellant, *vs.* Samuel H. Stone, auditor of public accounts; Charles Finley, secretary of state, & George W. Long, treasurer of the State of Kentucky, and The City of Louisville. Filed September 15th, 1898.